
DISCIPLINARY ACTIONS

The following orders have been edited. Administrative language has been removed to make the opinions more readable.

<u>Respondent's Name</u>	<u>Address of Record (City/County)</u>	<u>Action</u>	<u>Effective Date</u>	<u>Page</u>
<u>CIRCUIT COURT</u>				
Michael Henry Ditton	Bozeman, MT	5 Year Suspension	Aug. 25, 2004	20
Christopher Hunter Lynt	Alexandria	2 Year Suspension	Sept. 10, 2004	21
William P. Robinson Jr.	Norfolk	30 Day Suspension	Dec. 1, 2004	23
<u>DISCIPLINARY BOARD</u>				
Timothy Martin Barrett *	Virginia Beach	3 Year Suspension	July 23, 2004	24
George Albert Bates	Keswick	Summary Suspension	June 25, 2004	n/a
Donna Marie Briggs *	Norfolk	Revocation	August 27, 2004	26
Elizabeth Ann Mack Callaway	Warrenton	Public Reprimand w/Terms	August 6, 2003	30
Mac Andres Chambers	Roanoke	Revocation	June 25, 2004	30
Robert William Gookin	Falls Church	30 Day Suspension	August 14, 2004	32
Thomas Leroy Johnson Jr.	Richmond	4 Year Suspension	May 27, 2004	34
Jeffrey Paul Kantor	Arlington	Revocation	Aug. 19, 2004	n/a
Larry Lynn Lewis	Woodbridge	Revocation	July 30, 2004	n/a
Leslie Wayne Lickstein	Fairfax	5 Year Suspension	Oct. 1, 2004	35
David Nicholls Montague	Hampton	Public Reprimand	Sept. 23, 2004	36
David Nash Payne	Hampton	Summary Suspension	Oct. 1, 2004	n/a
Stephen John Perrella	Coronado, CA	Revocation	August 27, 2004	37
Dominick Anthony Pilli*	Fairfax	90 Day Suspension	Oct. 1, 2004	37
Charles Lowenberg Pincus III	Prescott, AZ	45 Day Suspension w/Terms or CRESPA Fine	July 20, 2004	40
Richard Anthony Pizzi	Baskingridge, NJ	Revocation	Sept. 21, 2004	n/a
Steven Jeffrey Riggs	Santa Ana, CA	2 Year Suspension	March 22, 2004	42
Linda Wisner Sadler	Richmond	Revocation	Oct. 5, 2004	n/a
Randy Alan Weiss	Potomac, MC	3 Year Suspension w/Terms	July 29, 2004	43
<u>DISTRICT COMMITTEES</u>				
William G. Beninghove	Mechanicsville	Public Admonition	Sept. 20, 2004	44
James Newton Dickson III	Harrisonburg	Private Reprimand	Sept. 2, 2004	46
Royce Lee Givens Jr.	Leesburg	Public Reprimand	Sept. 2, 2004	47
Ted William Hussar	Annandale	Public Reprimand	Sept. 22, 2004	47

OTHER ACTIONS

DISABILITY SUSPENSIONS

<u>Respondent's Name</u>	<u>Address of Record</u>	<u>Jurisdiction</u>	<u>Effective Date</u>	<u>Page</u>
James Floyd Kelley	Front Royal	Disciplinary Board	August 27, 2004	35

COST SUSPENSIONS

Scot Peter George Cowan	Memphis, TN	Disciplinary Board	Oct. 12, 2004	n/a
John Michael DiJoseph	Arlington	Disciplinary Board	Oct. 12, 2004	n/a
Sam Garrison	Roanoke	Disciplinary Board	Aug. 31, 2004	n/a
Vincent Napoleon Godwin	Carrollton	Disciplinary Board	Sept. 16, 2004	n/a
James Grafton Gore Jr.	Marshall	Disciplinary Board	Sept. 2, 2004	n/a
Jerry Wayne Haris	Lexington	Disciplinary Board	Sept. 1, 2004	n/a
Roger Cory Hinde	Richmond	Disciplinary Board	Aug. 27, 2004	n/a
Donna Jean Kraus	Fairfax	Disciplinary Board	Sept. 9, 2004	n/a
Raymond William Konan	Falls Church	Disciplinary Board	Sept. 16, 2004	n/a
Robert Edmund LaSerte	Vienna	Disciplinary Board	Aug. 27, 2004	n/a
George Robert Leach	Williamsburg	Disciplinary Board	Aug. 24, 2004	n/a
Tina Maria McMillan	Fairfax	Disciplinary Board	Aug. 19, 2004	n/a
William Mark Russell	Burke	Disciplinary Board	Aug. 25, 2004	n/a

INTERIM SUSPENSIONS

Arnold Reginald Henderson V	Richmond	Failure to Comply w/Subpoena (Suspension Lifted 9/15/04)	Sept. 10, 2004	n/a
David Mayer Hill	Fredericksburg	Failure to Comply w/Subpoena	Oct. 7, 2004	n/a
Jamie Scott Osborne	Manassas	Failure to Comply w/Subpoena	Sept. 29, 2004	n/a
Linda Wisner Sadler	Richmond	Failure to Comply w/Subpoena	Sept. 10, 2004	n/a

* Respondent has noted an appeal to the Supreme Court of Virginia.

CIRCUIT COURT

VIRGINIA:

BEFORE THE THREE-JUDGE COURT
PRESIDING IN THE CIRCUIT COURT
FOR THE CITY OF ALEXANDRIA

VIRGINIA STATE BAR, EX REL.
FOURTH DISTRICT—SECTION II COMMITTEE,
V.

MICHAEL HENRY DITTON

RESPONDENT

IN CHANCERY NO. 04001 160

FINAL ORDER OF SUSPENSION

THIS CAUSE came on to be heard on the 25th day of August, 2004, for a hearing in this matter, before a Three Judge Court empaneled on March 2, 2004, by designation of the Chief Justice of the Supreme Court of Virginia, pursuant to Section 54.1-3935 of the 1950 Code of Virginia, as amended, consisting of the Honorable William R. Shelton, and the Honorable Barnard F. Jennings, retired Judges of the Twelfth and the Nineteenth Judicial Circuits, respectively, and by the Honorable James W. Haley, Jr., Judge of the Fifteenth Judicial Circuit and Chief Judge of the Three-Judge Court.

Yvonne DeBruyn Weight, Special Assistant Bar Counsel, appeared on behalf of the Virginia State Bar, and the Respondent appeared *pro se*.

WHEREUPON, a hearing was conducted upon the Rule to Show Cause issued against the Respondent, Michael Henry Ditton, which Rule directed him to appear and to show cause why his license to practice law in the Commonwealth of Virginia should not be suspended or revoked by reason of allegations of ethical misconduct set forth in the Certification issued by a subcommittee of the Fourth District—Section II Committee of the Virginia State Bar.

FOLLOWING the presentation of all testimonial and documentary evidence presented in open court, the Respondent moved to strike such evidence. The Court denied the Respondent's motion and the Respondent presented his evidence.

Following closing arguments by the parties, the Three-Judge Court retired to deliberate, and thereafter returned and announced that it had found, unanimously, and by clear and convincing evidence, the following:

1. The Respondent is an active member of the Virginia State Bar, but is not in good standing. He is presently a resident of the State of Montana.
2. On August 16, 2001, the Virginia State Bar was advised by the Commission on Character and Fitness of the Supreme Court of Montana that it had denied the Respondent's application for admission to the Montana Bar. The Commission found, and the Supreme Court of Montana affirmed upon appeal, that the Respondent had displayed a long history of unlawful and criminal conduct and abuse of legal process.
3. The Respondent has been charged in Virginia with being drunk in public, for driving while intoxicated, and for

knowingly obstructing a law enforcement officer in the performance of duty.

4. The latter charge occurred in January of 2000 when personnel from the Alexandria Sheriffs Department sought to execute a Writ of Possession after judgment for unpaid rent was obtained against the Respondent. The Respondent refused entry to the Sheriffs deputies despite warnings that his continued failure to comply with their instructions to open his door would result in an obstruction of justice charge. Following a forced entry, the Respondent was placed under arrest.
5. The return date on the charge was February 9, 2000; however, the Respondent failed to appear. As a result, the Respondent's bond was forfeited, and Judge Robert Giammittorio issued a *capias* for his arrest.
6. The Respondent also has a long history of filing civil actions against numerous and various defendants on grounds that are, at best, of questionable merit. Much of this *pro se* litigation revolves around his belief that a former law firm from which he was terminated has engaged in a conspiracy against him. That belief has led the Respondent, at various times and in various actions, to sue (1) the U.S. Postal Service, (2) Hewlett Packard, (3) the *Legal Times*, (3) Bell Atlantic, (4) American Express, (5) the City of Alexandria, (6) Crestar Bank, (7) Allstate Insurance, (8) Lexis Law Publishing, (9) the Virginia DMV Commissioner, and (10) the Department of the Army, to name but a few of the Respondent's targets.
7. The Respondent has filed actions against his former law firm (Holland & Knight) on at least three different occasions. In a 336 page complaint filed in the Eastern District of Virginia (Civil Action # 99-1901), the Respondent again sued Holland & Knight, including in that action 23 other entities as co-defendants.
8. On February 4, 2000, the Honorable Albert V. Bryan, Jr. enjoined the Defendant from initiating any further complaint against Holland & Knight or any other named Defendant without first obtaining leave of court.
9. On August 3, 2000, without obtaining such leave, and in response to his arrest, the Respondent filed an action against the City of Alexandria and 36 co-defendants in the Eastern District of Virginia. *Ditton, et al v. City of Alexandria* (Civil Action No. 00-1 155-A) is 378 pages long (with 22 attachments) and contains 79 counts against the 37 named defendants. The named co-defendants included not only the City of Alexandria, Sheriff Dunning, several deputies, Judge Giammittorio, the Commonwealth of Virginia Director of Social Services, and the US Postal Service, but a number of entities named as co-defendants in the earlier filings who were thereby subject to the injunction of Judge Bryan; namely, the Holland & Knight law firm, a Mr. Scott Morrison, a Mr. Charles Mitchell, and Capitol One Financial Corporation.
10. Among the counts in the Motion for Judgment, the Respondent alleged that the actions of the 37 defendants prevented him from engaging in his profession of the practice of law in Virginia.

11. The Respondent included as co-plaintiffs his two children, Wesley George Ditton and Nathan Michael Ditton, one of whom was at that time a minor and one of whom was nineteen years of age. While there is no particular consistency on the part of the Respondent, in the August 2000 filing he variously refers to himself as acting both *pro se* and as attorney for Michael and Nathan. While it is nearly impossible to follow the reasoning or logic of the Respondent's Complaint, or to understand with any clarity the purpose of naming his children as co-plaintiffs, the most likely reason seem to be wrongful interference by the various defendants with Plaintiffs' "parent-child relationship."

12. The Court finds that the Respondent filed an action in violation of a court order. Further, by naming his children as co-plaintiffs, by suing as their counsel when one of the children was not in his legal custody, the Respondent has made false statements to a tribunal concerning the legal status of his "client" child. In so doing, and while purporting to be acting as their "attorney", the Respondent has subjected two other individuals, one of whom was a minor, to potential sanctions and/or counter-claims.

UPON CONSIDERATION WHEREOF, the Three-Judge Court found by clear and convincing evidence that the Respondent has violated the following provisions of the revised Virginia Code of Professional Responsibility and Rules of Professional Conduct:

DR 1-1 02. Misconduct.

(A) (1), (3), (4) ***

DR 7-1 02. Representing a Client Within the Bounds of the Law.

(A) (5), (8) ***

RULE 3.3 Candor Toward The Tribunal

(a) (1) ***

RULE 8.4 Misconduct

(a), (b), (c) ***

THEREAFTER, the Virginia State Bar and the Respondent presented argument regarding the sanction to be imposed upon the Respondent for the misconduct.

AFTER DUE CONSIDERATION of the evidence and the nature of the ethical misconduct committed by the Respondent the Three-Judge Court reached the unanimous decision that Respondent's license to practice law in the Commonwealth of Virginia should be suspended for a period of five (5) years effective August 25, 2004. In electing to suspend rather than to revoke the Respondent's license to practice law in the Commonwealth of Virginia, the Three-Judge Court gave due consideration to the absence of any prior record of disciplinary matters."

ORDERED that the license of Respondent, Michael Henry Ditton, to practice law in the Commonwealth of Virginia be, and the same hereby is, SUSPENDED for a period of five (5) years, effective August 25, 2004; and it is further

THIS ORDER IS EFFECTIVE *NUNC PRO TUNC*
AUGUST 25, 2004
ENTERED this 4th day of October, 2004
By: James W. Haley, Jr.
Chief Judge of the Three-Judge Court



VIRGINIA:

IN THE CIRCUIT COURT
FOR THE CITY OF ALEXANDRIA

VIRGINIA STATE BAR, EX REL.
FOURTH DISTRICT—SECTION II COMMITTEE,
COMPLAINANT/PETITIONER,
v.

CHRISTOPHER HUNTER LYNT, ESQ.,
RESPONDENT
CHANCERY NO. CH04001593

FINAL ORDER OF SUSPENSION

ON THE 10th day of September, 2004, this matter came before the Three-Judge Court empaneled on the 11th day of August, 2004, by designation of the Chief Justice of the Supreme Court of Virginia, pursuant to § 54.1-3935 of the 1950 Code of Virginia, as amended, consisting of the Honorable James E. Kulp and the Honorable J. Howe Brown Jr., retired Judges of the Fourteenth and Nineteenth Judicial Circuits, respectively, and by the Honorable James W. Haley Jr., Judge of the Fifteenth Judicial Circuit and Chief Judge of the Three-Judge Court.

Seth M. Guggenheim, Assistant Bar Counsel, appeared on behalf of the Virginia State Bar, and Daniel L. Hawes, Esquire, appeared on behalf of Respondent, Christopher Hunter Lynt, who was also present during the proceedings. At the conclusion of opening statements, Mr. Hawes withdrew as counsel for the Respondent, with Respondent's concurrence and the permission of the Three-Judge Court. Thereafter, the Respondent proceeded, *pro se*.

WHEREUPON, a hearing was conducted upon the Rule to Show Cause issued against the Respondent, Christopher Hunter Lynt, which Rule directed him to appear and to show cause why his license to practice law in the Commonwealth of Virginia should not be revoked or suspended by reason of allegations of ethical misconduct set forth in the Certification issued by a subcommittee of the Fourth District-Section II Committee of the Virginia State Bar.

FOLLOWING the presentation of the Virginia State Bar's testimonial and documentary evidence in open court, the Respondent moved to strike such evidence, and tendered a Memorandum to the Three-Judge Court in support thereof. The Court denied the Respondent's said motion, and the Respondent presented his evidence.

AT THE CONCLUSION of the presentation of all evidence related to Respondent's alleged misconduct, the Three-Judge Court retired to deliberate, and thereafter returned and announced that it had found, unanimously, and by clear and convincing evidence, the following:

1. At all times relevant to the matters set forth herein, Christopher Hunter Lynt, Esquire (hereafter "Respondent"), was an attorney licensed to practice law in the Commonwealth of Virginia.
2. The Respondent represented a German inventor, Raymund Eisele, who was also the chairman of a German joint stock company known as SmartDiskette GmbH.
3. In 1995, the Respondent incorporated his own ideas into a patent application that he was preparing on behalf of his client. The application pertained to a hand-held device which communicated with a "smart" diskette, which is a form of floppy disk with built-in electronics. As will be more fully set forth below, the Respondent's own ideas, incorporated by him in his client's patent application, would subsequently be claimed by the Respondent to be his own patentable "invention." The essence of the alleged invention was the attachment of an electronic camera to the hand-held device and the creation of a process whereby images could be transferred from an electronic camera to a personal computer using a smart disk.
4. The patent application, a product, in part, of confidences and secrets communicated by and on behalf of the client to the Respondent, was approved by the client and filed in 1995. It did not name the Respondent as an inventor or co-inventor, and the Respondent did not at that time indicate in any manner whatsoever to the client that he, the Respondent, believed himself to be an inventor or co-inventor entitled to any proprietary interest of any nature regarding the subject matter of the patent application. The Respondent subsequently prepared a second, related, patent application, which was filed on June 2, 1997.
5. In approximately mid-1997, the client's German firm was acquired by another company, and ultimately a corporation known as SmartDisk Corporation (hereafter "Complainant") was formed. As of the time of filing of the federal lawsuit mentioned below, SmartDiskette GmbH was a wholly owned subsidiary of SmartDiskette Limited, a company formed under the laws of the United Kingdom, which, in turn, was a wholly owned subsidiary of the Complainant.
6. In approximately late 1998, the Respondent personally participated in the prosecution of the second application, to which claims were added embodying his alleged idea, but the Respondent made no claim at the time to his client or to the U. S. Patent and Trademark Office that he was an inventor or co-inventor.
7. As part of an effort to consolidate patent work in a single law firm, the Respondent's client, Mr. Eisele, discharged the Respondent as his patent attorney in May of 1999. The Respondent transferred the client files to the Complainant's patent attorneys, and retained copies of certain file materials so as to aid Complainant's patent attorneys if and when necessary.
8. Thereafter, in the course of corresponding with Complainant's patent attorneys, the Respondent, for the first time, declared himself the originator of the camera idea contained in the 1995 and 1997 patent applications, and suggested that he, the Respondent, be added as an inventor in the pertinent filings in the United States Patent and Trademark Office.
9. The Respondent filed a patent application on June 4, 1999, naming himself as a co-inventor with Raymund Eisele and Axel Burkart. The application was accompanied by a transmittal letter stating that "A Declaration signed by the inventor(s) and the filing fee will be submitted in due course"; and requested that "all communications" be addressed to the Respondent. Furthermore, a cover sheet to the application contained a section heading "ATTORNEYS AND CORRESPONDENCE ADDRESS:" below which was listed the Respondent's name, home address, and telephone number. At the time he filed the June 4, 1999, patent application, the Respondent was not, in fact, Raymund Eisele's and/or Axel Burkart's attorney, nor had he consulted with them respecting the application prior to its having been filed, nor had he secured their permission to represent that they, or either of them, would be signing a "Declaration."
10. The June 4, 1999, patent application expressly stated therein, as follows: "This application claims the benefit of priority of co-pending applications 08/514,382, filed August 11, 1995, and 08/867,496, filed June 2, 1997." The said "co-pending applications" were, in fact, the 1995 and 1997 applications referred to elsewhere herein, which were prepared, in whole or in part, by the Respondent on behalf of his client during the course of his representation of the client, using information supplied to the Respondent in confidence by and on behalf of the client.
11. After learning from Respondent that the June 4, 1999, patent application had been filed, Raymund Eisele, the Respondent's former client, requested that Respondent assign any rights Respondent might have in the said patent application to the Complainant. During the course of e-mail exchanges between the Respondent and his former client, the Respondent indicated, among other things, that there were legal and ethical issues that needed to be researched in connection with the requested assignment and Respondent's own interests in the application in question.
12. The Respondent ultimately responded to his client's and the Complainant's repeated demands that Respondent assign his rights to the Complainant, including their threat of a federal lawsuit, by demanding, through his counsel, payment of the sum of \$2,600,000.00, plus royalties of 10% from August 4, 1999, in exchange for the assignment demanded by Respondent's former client and the Complainant.
13. On August 4, 1999, Respondent's former client, Raymund Eisele, together with Complainant and SmartDiskette GmbH, filed suit against the Respondent in the United States District Court for the Eastern District of Virginia. As of October 1, 1999, a settlement was reached between the parties which included, *inter alia*, Complainant's payment to Respondent in the sum of \$30,000.00 in exchange for the assignment that had been requested of him. The Complainant's decision to settle the matter and to tender the said payment to the Respondent was made for business reasons.

THE THREE-JUDGE COURT thereupon stated its unanimous finding that the Virginia State Bar had proven, by clear and convincing evidence, that the Respondent had violated the following provisions of the revised Virginia Code of Professional Responsibility:

DR 4-101. Preservation of Confidences and Secrets of a Client.

- (A) ***
- (B) (2) (3) ***

The Three-Judge Court further ruled, unanimously, that the Virginia State Bar had failed to prove, by clear and convincing evidence, that Respondent had violated those provisions of DR 5-101 and DR 5-104 as set forth in the aforesaid Certification.

THEREAFTER, the Virginia State Bar and the Respondent presented argument regarding the sanction to be imposed upon the Respondent for the ethical misconduct found by the Three-Judge Court. The members of the Three-Judge Court retired to deliberate, and thereafter returned and announced the decision that Respondent's license to practice law in the Commonwealth of Virginia should be suspended for a period of two (2) years, effective September 10, 2004.

ORDERED, that Respondent's license to practice law in the Commonwealth of Virginia be, and the same hereby is, SUSPENDED for a period of two (2) years, effective September 10, 2004; and it is further

THIS ORDER IS EFFECTIVE *NUNC PRO TUNC* SEPTEMBER 10, 2004.
AND THIS ORDER IS FINAL.
Entered this 15th day of September, 2004.

FOR THE THREE-JUDGE COURT:
JAMES W. HALEY, JR.
Chief Judge of the Three-Judge Court



VIRGINIA:
IN THE CIRCUIT COURT
OF THE CITY OF NORFOLK

VIRGINIA STATE BAR EX REL
SECOND DISTRICT COMMITTEE
v.
WILLIAM P. ROBINSON, JR.
CASE NO. CL04-21

ORDER

This matter came for hearing on June 3, 2004, pursuant to Code of Virginia Section 54.1-3935, before a three-judge panel consisting of the Honorable James A. Luke, the Honorable H. Thomas Padrick Jr. and the Honorable Walter W. Stout III, Chief Judge presiding. The Virginia State Bar appeared through its Assistant Bar Counsel, Richard E. Slaney, and the Respondent appeared in person and through his counsel, Michael L. Rigsby, Esq.

At the misconduct stage of the hearing, the parties stipulated to many of the factual allegations contained in the Certification. The Court then received evidence and argument from the parties as to whether the evidence proved any violations of the Virginia Rules of Professional Conduct under a clear and convincing standard. Following deliberation, the Court announced its findings as reflected below.

In the matter involving Kevin Williams, the Court found by clear and convincing evidence Mr. Robinson's conduct violated Rule 1.1, relating to competence, and Rule 1.3(a), relating to reasonable diligence and promptness. The remaining charges were dismissed.

In the matter involving Malcolm Francis, the Court found by clear and convincing evidence Mr. Robinson's conduct violated Rule 1.1, relating to competence, Rule 1.3(a), relating to reasonable diligence and promptness, Rule 1.4(a), relating to client communication, and Rule 8.4(c), relating to misrepresentation. The remaining charges were dismissed.

In the matter involving Nathaniel Bryant, the Court found by clear and convincing evidence Mr. Robinson's conduct violated Rule 1.3(a), relating to reasonable diligence and promptness. The remaining charges were dismissed.

In the matter involving Clayton Eley, the Court found by clear and convincing evidence Mr. Robinson's conduct violated Rule 1.1, relating to competence, and Rule 1.3(a), relating to diligence and promptness. The remaining charges were dismissed.

In the matter involving Lester Moms, the Court found by clear and convincing evidence Mr. Robinson's conduct violated Rule 1.4(a), relating to client communication. The remaining charges were dismissed.

In the matter involving Melvin Mizzell, the Court found by clear and convincing evidence Mr. Robinson's conduct violated Rule 1.3(a), relating to diligence and promptness, and Rule 1.4(a), relating to client communication. The remaining charges were dismissed.

The case then moved to the sanctions phase of the proceeding, and the Court heard additional evidence and the arguments of counsel. After considering same and after due deliberation, the Court

ORDERED a thirty (30) day suspension of Mr. Robinson's license to practice law in this Commonwealth, to begin December 1, 2004. The Court further

ORDERED that Mr. Robinson shall, within six (6) months from July 1, 2004, hire a law office management consultant: (1) to design and implement a system for tracking case deadlines, and (2) to design and implement a client communication and information system. The systems and changes recommended by the consultant must be in place by the end of the six month period and shall first be reviewed and approved by Bar Counsel. The Court further

ENTERED this 28th day of June, 2004.

FOR THE COURT:

WALTER W. STOUT, III
Chief Judge Designate of the Three-Judge Court

A. THOMAS PADRICK, JR.
Judge Designate

JAMES A. LUKE
Judge Designate



DISCIPLINARY BOARD

[NOTE: Respondent has noted an appeal to the Virginia Supreme Court.]

VIRGINIA:
BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
TIMOTHY MARTIN BARRETT
VSB DOCKET NO. 02-022-1069 AND 02-022-1070

ORDER OF SUSPENSION

THIS MATTER came upon to be heard on Friday, July 23, 2004, at 9:00 a.m., before a panel of the Virginia State Bar Disciplinary Board convening at the State Corporation Commission, Court Room A, Tyler Building, 1300 East Main Street, Second Floor, Richmond, Virginia, 23219. The Board was comprised of Robert L. Freed, Chair, V. Max Beard (Lay Member), Russell W. Updike, William C. Boyce, Jr., and David R. Schultz. The court reporter was sworn by the Chair, who then inquired of each member of the panel as to whether any member had any personal or financial interest or bias which would interfere with or influence that member's determination of the matter. Each member, including the Chair, answered in the negative; the matter proceeded. The Respondent, Timothy Martin Barrett, was represented by his counsel, Michael L. Rigsby, Esquire, and was present in person. The Virginia State Bar appeared by its counsel, Richard E. Slaney, Esquire.

The matter came before the Disciplinary Board by way of a Direct Certification of the Second District, Section II Subcommittee of the Virginia State Bar, after the Respondent had been given notice of said Certification on the 2nd day of October, 2003. (VSB Exhibit 1).

I. FINDINGS OF FACT

VSB Exhibits 1-37 were admitted without objection. The Bar and Respondent agreed to accept the deposition transcript of Lanis Kames taken on June 29, 2004, as VSB Exhibit 38. Respondent's Exhibit 1 was admitted without objection. The Board made, *inter alia*, the following findings of fact on the basis of clear and convincing evidence:

1. At all times relevant to the charge in this matter Timothy M. Barrett, Esquire, hereinafter the "Respondent," has been an attorney licensed to practice law in the Commonwealth of Virginia, and the Respondent's address of record with the Virginia State Bar has been 5701 Thurston Avenue,

Suite 101, Virginia Beach, Virginia, 23455. The Respondent received proper notice of this proceeding as required by Part Six, § IV, ¶ 13(E) and (D)(a) of the Rules of the Supreme Court of Virginia.

2. In the Summer of 2001, Respondent and his wife, Valerie Jill Barrett ("Jill Barrett"), separated. Jill Barrett took the couple's six children and returned to her hometown of Independence, Virginia from Virginia Beach, Virginia.
3. On July 25, 2001, Respondent sent an e-mail to Jill Barrett offering legal advice despite the fact that his interests at that point had a reasonable possibility of being in conflict with Jill Barrett's interests. Specifically, Respondent offered advice concerning: (a) where venue for the divorce proceedings would be; (b) the doctrine of imputed income; (c) individual responsibility for marital debt; and, (d) child custody. Respondent further stated in the July 25, 2001, e-mail that "while it will be heartbreaking to watch you violate God's Word and disrespect your husband before the pagans, I am prepared for the fight." (VSB Exhibit 2).
4. On or about July 30, 2001, Jill Barrett retained Karen L. Loftin, Esquire, to represent her in the divorce proceedings. (VSB Exhibit 3). Thereafter, with the knowledge that Jill Barrett was represented by counsel, but without such Counsel's knowledge, Respondent sent Jill Barrett an e-mail on September 12, 2001, in which he gave legal advice to his wife relative to their separation, child custody issues and divorce. Respondent outlined in detail what Jill Barrett would face if she "chose to violate God's Word" and "sue[d] her husband in pagan courts." He specifically threatened Jill Barrett, the kids, and Jill Barrett's attorney in Virginia Beach weekly. Respondent threatened to make the divorce as expensive as possible, to "contest every aspect of [her] claim," and to "appeal any and all negative rulings." The Respondent vowed that Jill Barrett's legal fees would exceed Thirty Thousand and 00/100 Dollars (\$30,000.00). (VSB Exhibit 4).
5. In the fall of 2001, it became clear that the divorce action would be heard in Virginia Beach, and Jill Barrett retained Lanis L. Karnes, Esquire, to represent her in that venue. For several months thereafter and in numerous letters, Respondent wrote Attorney Karnes but referred to her by her former husband's name of "Price." (VSB Exhibits 5-12, 14-15, 17-23). Respondent testified that he did not believe Attorney Karnes had the legal right to change her name based upon his religious beliefs. Despite the fact that Respondent is divorced from Jill Barrett and remarried, Respondent maintained that there was "no such thing as divorce in my religion." According to the Respondent, referring to Attorney Karnes by her former husband's name was a way to honor Kames' former husband. Respondent indicated to the VSB's investigator that it was a method for him to protest Kames' role as Jill Barrett's counsel.
6. Respondent sent a letter dated September 25, 2001 to Lanis L. Price (*sic*), Esquire, [Lanis K,arnes], in which he assaulted her religious views by stating, "Words cannot express the disappointment I feel towards you, one who ostensibly claims Christ as her savior, in that you would represent one Christian in their suit against another, let alone a wife verses a husband, in violation of the Word of

- God (I Cor 6) causing that Word to be defamed (Titus 24-5). Shame on you.” (VSB Exhibit 5).
7. Respondent sent a letter dated September 26, 2001, to Lanis L. Price (*sic*), Esquire, [Lanis Kames], wherein he made disparaging and harassing comments, including the following, “Please pass on to your client the fact that it has not escaped my notice the irony that my wife, who just weeks ago was feigning contempt for the feminism of her friends, has retained one of the worst examples of ‘Christian’ feminism ever to pollute the campus of Regent University. You two will make a lovely pair.” (VSB Exhibit 6).
 8. Respondent sent a letter dated October 3, 2001, to Lanis L. Price (*sic*), Esquire, [Lanis Kames], wherein he accused her of unethical conduct and threatened to have her disbarred. (VSB Exhibit 9).
 9. Respondent sent a letter dated October 3, 2001, to Lmis L. Price (*sic*), Esquire, [Lanis Kames], wherein he suggested that she was not complying with Rule 1.1 and encouraged her to withdraw as counsel. Respondent also alleged that she had filed frivolous motions with the court and threatened to request sanctions pursuant to § 8.01-271.1 of the Code of Virginia. (VSB Exhibit 10).
 10. Respondent sent a letter dated October 5, 2001, to Lanis L. Price (*sic*), Esquire, [Lanis Kames], wherein he advised that he looked forward to seeing Attorney Price (*sic*) at an upcoming hearing which would be “the beginning of what will be a series of hearings that will not conclude until the Virginia Supreme Court has passed on the matter of *Barrett v. Barrett*.” (VSB Exhibit 11).
 11. Respondent sent a letter dated October 18, 2001, to Lanis L. Price (*sic*), Esquire, [Lanis Kames], wherein he acknowledged threatening her with a malpractice action in connection with her representation of his wife. Respondent further stated that he would report Attorney Price (*sic*) to the Virginia State Bar for her violation of Rule 1.1 of the Rules of Professional Conduct based upon her alleged failure to proofread her letters and pleadings to insure accuracy and “legal faithfulness.” (VSB Exhibit 17).
 12. Respondent sent a letter dated October 22, 2001, to Lanis L. Price (*sic*), Esquire, [Lanis Kames], wherein he questioned her as to how she could ethically justify charging her client for travel instead of advising her client to retain local counsel. Respondent specifically alleged that this conduct was a violation of Rule 1.5 of the Rules of Professional Conduct. (VSB Exhibit 18).
 13. Respondent sent a letter dated November 8, 2001, to Lanis L. Price (*sic*), Esquire, [Lanis Kames], wherein he accused opposing counsel of being “inept.” Respondent further stated, “I beg you to start zealously representing your client with competence and stop wasting her money and my time.” (VSB Exhibit 22).
 14. On October 19, 2001, Respondent signed and filed a Motion to Strike the Pleadings in the divorce action based upon the fact that the Plaintiff was listed as Valerie Jill Rhudy Barrett, whereas his wife’s name was Valerie Jill Barrett. (VSB Exhibit 32). On information and belief, Rhudy was Jill’s maiden name. Rhudy was Jill Barrett’s maiden name, a fact of which Respondent was well aware. Respondent alleged that he did not know the Plaintiff, did not marry the Plaintiff and therefore could not be a Defendant in a divorce from the Plaintiff and asked that the pleading be stricken on that basis, further asking for an award of costs for the time and expense necessary in filing the motion. (VSB Exhibit 32).
 15. In addition to the Motion to Strike the Pleadings, Respondent filed other motions with the court including, but not limited to, a Motion to Disqualify the Petitioner’s Attorney (VSB Exhibit 25) and a Motion to Rehear and to Have The Honorable Judge Shockley Recuse Herself (VSB Exhibit 30).
 16. On April 2, 2002, Respondent sent via facsimile a lengthy letter to The Honorable H. Thomas Padrick, Jr., Circuit Court Judge for the Circuit Court of the City of Virginia Beach. Respondent did not provide a copy of that correspondence to opposing counsel. The six page letter dealt specifically with the Respondent’s request to have Judge Padrick transfer custody of the children from Jill Barrett to the Respondent. The letter contained factual representations and legal arguments in support of the request. (VSB Exhibit 35). Jill Barrett’s counsel was contacted by court personnel and advised that the letter had been filed.
 17. Despite an order by Judge Padrick that counsel were not to file any motions without first discussing the substance of the motion with each other and then the court via conference call (VSB Exhibit 34), Respondent attempted to file numerous motions in a hearing before Judge Shockley of the Circuit Court of the City of Virginia Beach without any prior conference call with the court.
 18. On August 14, 2002, The Honorable H. Thomas Padrick, Jr. found Respondent to be in contempt of court for failure to timely pay child support and spousal support and sentenced him to one hundred and twenty (120) days in the Virginia Beach Correction Center, with confinement suspended, conditional upon Respondent making payments on the arrearage in specific amounts. (VSB Exhibit 36).
 19. On March 24, 2003, The Honorable J.L. Tompkins of the Grayson County Juvenile and Domestic Relations District Court found Respondent guilty of failure to pay child support and sentenced Respondent to twelve (12) months in jail with the jail sentence suspended, conditional upon the Respondent paying the support as ordered, plus payments of the arrearage within six months. (VSB Exhibit 37). As of March 16, 2003, the child support arrearage exceeded Seven Thousand Five Hundred and 00/100 Dollars (\$7,500.00). Respondent failed to comply with the court ordered support payments, despite the fact that he reported to the Grayson County Juvenile and Domestic Relations Court on September 6, 2001, that he would lose approximately One Thousand Four Hundred and 00/100 Dollars (\$1,400.00) per day if he were obligated to travel from Virginia Beach to Grayson County for court proceedings. Moreover, Respondent defied the court order of child support despite the fact that he had the financial wherewithal to purchase a luxury sports car (Chevrolet Corvette) and make payments of Nine Hundred and 00/100 Dollars (\$900.00) per month until selling the car earlier this year

20. Respondent acknowledged that he was subject to the Virginia Rules of Professional Conduct notwithstanding the fact that he believes the Virginia Beach Circuit Court is a pagan court, which he equates to a non-Christian court. Respondent further testified that the Disciplinary Board of the Virginia State Bar was a "pagan body."

II. MISCONDUCT

The Certification charged violations of the following provisions of the Virginia Rules of Professional Conduct:

RULE 3.1 Meritorious Claims And Contentions

RULE 3.4 Fairness To Opposing Party And Counsel
(i, (j) ***

RULE 3.5 Impartiality And Decorum Of The Tribunal
(e) (1), (2), (3), (4) ***

RULE 4.2 Communication With Persons Represented By Counsel

RULE 4.3 Dealing With Unrepresented Persons
(b) ***

RULE 4.4 Respect For Rights Of Third Persons

RULE 8.4 Misconduct
(b) ***

III. DISPOSITION

Upon review of the foregoing findings of fact, upon review of exhibits presented by Bar Counsel on behalf of the VSB as Exhibits 1-38, upon review of Exhibit 1 on behalf of the Respondent, upon evidence presented by Respondent in the form of his own testimony, and at the conclusion of the evidence regarding misconduct, the Board recessed to deliberate. After due deliberation, the Board reconvened and stated its findings that the Board had determined that the Bar did prove by clear and convincing evidence that the Respondent had violated Rules 3.1, 3.4(i), 3.4(j), 3.5(e), 4.3(b) and 8.4(b). Since the Bar had withdrawn charges of violations of Rules 4.2 and 4.4, those charges were dismissed.

Thereafter, the Board received evidence of aggravation and mitigation from the Bar and Respondent, including Respondent's lack of a prior disciplinary record. The Board recessed to deliberate what sanction to impose upon its findings of misconduct by Respondent. After due deliberation the Board reconvened, and the Chair announced that by a vote of three to two the sanction to be imposed was a three (3) year license suspension. The Chair announced that two members of the Panel had voted for revocation of the Respondent's license.

Accordingly, it is ORDERED that the license of Respondent, Timothy Martin Barrett, to practice law in the Commonwealth of Virginia, be, and the same hereby is, suspended, effective July 23, 2004, for a period of three (3) years.

ENTERED this 5th day of August, 2004
VIRGINIA STATE BAR
Robert L. Freed, First Vice Chair



[NOTE: Respondent has noted an appeal to the Virginia Supreme Court.]

VIRGINIA.
BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
DONNA MARIE BRIGGS
VSB DOCKET NOS: 02-022-3082
AND 02-022-3487

ORDER OF REVOCATION

This matter came on to be heard on August 26 and 27, 2004 before a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Peter A. Dingman, Second Vice-Chair ("Chair") James L. Banks Jr., Glenn M Hodge, David R. Schultz and V. Max Beard, lay member The Virginia State Bar ("VSB" or "Bar") was represented by Richard E. Slaney, Assistant Bar Counsel. The Respondent, Donna Marie Briggs ("Briggs") appeared in person and represented herself. The Chair polled all members of the panel as to whether any of them was conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member, including the Chair, responded in the negative.

The matters came before the Board on the District Subcommittee Determination for Certification by the Second District Subcommittee, Section II.

I. Findings of Facts

VSB Exhibits 1-42 were admitted without objection. The VSB and the Respondent were unable to enter a stipulation of facts The VSB presented evidence through one witness, the Respondent, and its exhibits. The Respondent's Exhibits 1-10 were admitted over the objection of the VSB. The Respondent testified on her behalf and called no other witnesses. The Board makes the following findings of fact on the basis of clear and convincing evidence.

1. At all times relevant hereto, the Respondent, Donna Marie Briggs, has been an attorney licensed to practice law in the Commonwealth of Virginia and her address with the VSB has been 531 Spotswood Avenue, Norfolk, Virginia, 23517-2007. The Respondent received proper notice of this proceeding as required by Part 6, Sec IV, Paragraph 13(E) and (1)(a) of the Rules of the Supreme Court of Virginia.
2. VSB Docket No 02-022-3082 is an anonymous complaint and VSB Docket No 02-022-3487 is a judicial complaint.
3. The complaints arise from the Respondent's conduct in lawsuits she filed *pro se* in the Circuit Court for the City of Norfolk (L97-3350) (the "State Court Case") and in the United States District Court for the Eastern District of

Virginia, Norfolk Division (Case Nos 98-CV-288, 99-CV-83 and 2:01CV903) (the “Federal Cases”). The Respondent filed these cases seeking damages and vindication from her two arrests by Norfolk police in 1996 and a subsequent complaint against the Respondent to the VSB by one of the arresting officers. Respondent’s misconduct in these cases is delineated in the following paragraphs.

The State Court Case.

4. The Respondent filed the State Court Case against two witnesses of the events that led to her first arrest in March 1996. In this case she alleged that the defendants had made defamatory statements to the police officers in such a context as to result in her arrest. She also alleged that the defamatory statements were used and republished in a complaint that one of the police officers made to the VSB. In addition to the defamation claim, she also alleged a conspiracy to injure her in her trade or business. In this case, the first judge to which it was assigned subsequently recused himself. The case was then assigned to two other judges and, in both instances, the Respondent moved for these judges to recuse themselves. While the judges did not act on the recusal motions, because of retirement or for other reasons, the case was subsequently assigned to the Honorable Paul Sheridan from the Circuit Court for the County of Arlington.
5. The Respondent stated that she had met with the two witnesses whom she ultimately sued in the State Court Case and that they denied making the statements attributed to them by the police. She stated that she filed the suit against them to obtain these denials under oath when the witnesses refused to give her such an affidavit. While the Respondent stated that she did not want to cause these witnesses any problems and that she sought to limit their expense, she offered no reason as to why she simply did not subpoena these witnesses and depose them in prior litigation she had filed against the arresting police officers in Circuit Court for the City of Norfolk.
6. In 2001, Judge Sheridan ruled on a number of motions, including motions sanctioning the Respondent \$4,750.00 as to one defendant and \$9,000.00 as to the other defendant. From the transcript of the hearing on the motion for sanctions and Judge Sheridan’s ruling, it is clear that Judge Sheridan awarded these sanctions pursuant to Virginia Code Section 8.01-27 1.1. In light of Respondent’s statement that she filed the State Court Case to obtain sworn statements from the defendants in that suit for use in other litigation, then, clearly, her action was sanctionable under Virginia Code Section 8.01-271.1.
7. In addition, in her motion for judgment, the Respondent stated that the incidents leading to the alleged defamatory statements occurred on March 13, 1997, when in fact they had occurred on March 13, 1996. This action was filed in December 1997, well past the one-year statute of limitations for a defamation action. When this discrepancy was called to Respondent’s attention she failed to take any action to correct the pleading for over two years.
8. Finally, at a hearing on March 26, 2001, Judge Sheridan offered the Respondent the opportunity to sign an order which the Respondent refused to do after asking the Judge

whether it was mandatory that she sign it and being told it was not mandatory. However, later in the hearing the Respondent claimed that Judge Sheridan had refused to allow her to sign the order. Thereafter, Judge Sheridan sanctioned her \$1,000.00 for what he termed a “flat out lie.”

The Federal Cases.

9. In 1998, Briggs filed a complaint against the City of Norfolk, certain city officials and city police officers in the United States District Court for the Eastern District of Virginia, Norfolk Division, case number 98-CV-288. She later filed a related complaint, case number 99-CV-83, which was consolidated with case number 98-CV-288 (hereinafter the “Federal Case”). The Federal Case resulted from Briggs’ 1996 arrests and, after various amendments, included 16 defendants and 138 counts. The Honorable Jerome B Friedman heard the Federal Case. Judge Friedman granted defendants’ Motions for Summary Judgment on most of the counts, but a few went to trial in 2002. On July 14, 2002, Judge Friedman dismissed the remaining claims with prejudice because of the Respondent’s extreme misconduct. Specifically, the Respondent, while testifying in her behalf, repeatedly testified as to matters that the District Court had ruled inadmissible and then commented critically to the jury regarding the District Court’s rulings.
10. In pre-trial proceedings, as well as in the trial itself, the Respondent’s conduct failed to comply with the Rules of Professional Conduct. She spoke disparagingly of the Court, indicating her belief that the Court would not provide her with a fair trial. She failed to comply with the court order to attend a pre-trial meeting with opposing counsel to prepare a pre-trial order. She appeared in court stating that she was unprepared and had not read the proposed pre-trial order submitted by defendants’ counsel. She was sanctioned \$190.00 for filing objectionable discovery motions. She persisted in communicating to the court by letter rather than by motion after being admonished by the court on this form of communication. She filed untimely requests for witness subpoenas and then attempted to serve them herself, which is not permitted by a *pro se* plaintiff.
11. In the Federal Case she declared the conduct of the District Court to be a sham and a cover up and in the proceeding before the Virginia State Bar Disciplinary Board repeated that the District Court’s conduct was criminal. In the course of the Federal Case, Respondent filed three interlocutory appeals with the United States Court of Appeals for the Fourth Circuit, including the denial of her Motion for Recusal, and in that appeal asserted that all the judges in the Eastern District should be disqualified from hearing her case.
12. All of Respondent’s appeals, including the District Court’s dismissal of Briggs’ claims with prejudice, were denied.
13. After dismissal and the conclusion of the appeal, Judge Friedman ruled on defendants’ motions for attorneys’ fees and imposed a sanction of \$2,536.50 for the Respondent’s failure to abide by court orders and \$28,196 for her abusive litigation practices. This sanction order was upheld on appeal.

14. During the discovery phase, the City of Norfolk produced numerous documents in response to the Respondent's discovery request. These documents were provided under a Protective Order that among other things required (a) that if any of the documents were filed in the pending actions, that they would be filed under seal and (b) at the conclusion of the litigation that the documents would be returned to the City of Norfolk.
15. Following the conclusion of the litigation and all appeals, the City of Norfolk moved the District Court to require the Respondent to return to it all confidential information produced by the City. The Respondent opposed the motion and sought Court permission to disseminate some or all of the confidential material. The Honorable Henry C. Morgan was assigned to hear these post trial matters. On July 24, 2002, the Court ordered the Respondent to comply with the Protective Order and return to the City all confidential information produced by the City pursuant to the Protective Order and also to retrieve and return any confidential documents she may have disseminated to third parties.
16. On December 23, 2002, Judge Morgan ordered Briggs. (a) to respond to the City's discovery requests related to its attempt to collect the monetary sanctions imposed against her; (b) to pay the City's reasonable expenses (including attorneys' fees) for her unjustified failure to comply with those discovery requests, (c) to show cause why she should not be held in contempt for her acts in allegedly releasing confidential information to third parties in violation of the Court's July 24, 2002 order, and; (d) to show cause why she should not be held in contempt for failing to return confidential information to the City. Judge Morgan again ordered Briggs to return the confidential information to the City.
17. On May 5, 2003, the Court entered an order memorializing its rulings at an April 30, 2003 hearing. In that order Judge Morgan: (a) disposed of several non-meritorious motions made by Briggs, (b) found as a fabrication Briggs' claim she was unable to identify the confidential documents; (c) found Briggs deliberately withheld the confidential documents in defiance of prior Court orders; (d) found Briggs in civil contempt; and, (e) imposed a \$50 per day coercive sanction on Briggs to continue until she purged herself of contempt.
18. On June 5, 2003, the Court entered an order memorializing its rulings at a June 4, 2003 hearing. In that order Judge Morgan: (a) found Briggs purged herself of contempt by delivering original confidential documents to the City at the hearing and describing her efforts to obtain duplicate copies she previously gave to third parties; (b) confirmed the coercive sanction against Briggs in the amount of \$1,750, and; (c) imposed a pre-filing review on Briggs for any matter related to the Federal Case. At least in part, Judge Morgan expressly relied upon Briggs' statement, made under oath, that she herself retained no copies of the confidential documents she returned to the City.
19. On June 6, 2003, Briggs lodged with the Court a document entitled "Supplementary Affidavit" in which she averred she retained two copies of the confidential documents, that her inability to locate the copies prevented their return to the City and that she would in any event not return one copy (if found). This, in turn, generated a motion by the City for the Court to reconsider its June 5 order, and caused the Court to enter an order dated July 3, 2003, scheduling the matter for a hearing on July 28, 2003.
20. On July 31, 2003, the Court entered an order memorializing its rulings at a July 28, 2003 hearing. In that order Judge Morgan: (a) noted Briggs again claimed she could not identify the confidential documents, even though she returned the originals of those documents to the City at the previous hearing; (b) noted Briggs refused to confirm she returned all copies of the confidential documents to the City; (c) again found Briggs in civil contempt; (d) re-imposed the \$50 per day coercive sanction beginning July 28, and; (d) reaffirmed the application of pre-filing review for Briggs. The Court also set a new hearing date of August 28, 2003.
21. On August 28, 2003, following a hearing that same day, Judge Morgan entered an order: (a) noting Briggs would not directly respond to the Court's questions regarding whether she still possessed copies of the confidential documents; (b) finding she did in fact possess copies of those documents; (c) noting she refused to deliver or promise to deliver to the City any copies she still possessed; (d) finding Briggs remained in civil contempt; (e) as an added coercive sanction, incarcerated Briggs for two hours, and; (f) again ordered Briggs to produce any copies of the confidential documents to the City. The Court also set a new hearing date of September 3, 2003.
22. On September 15, 2003, the Court entered an order memorializing its rulings at a September 3, 2003 hearing. In that order Judge Morgan: (a) reaffirmed the Court's prior finding that Briggs' claim she could not identify the documents was a fabrication and an attempt to delay and confuse the proceeding; (b) noted that Briggs' claim that she needed to retain copies of the documents as evidence of some type of conspiracy was addressed by the fact that the Court had directed that the City retain the documents so that they would be available if found relevant in any other proceeding; (c) noted that Briggs admitted she took no steps since the last hearing to return the documents to the City; (d) found her refusal to make a responsive answer to questions about whether she retains copies of the documents to be an admission she did retain copies of the documents; (e) noted her refusal to identify any persons or entities to whom she sent such documents after being ordered not to do so; (f) incarcerated Briggs for approximately four hours fifty minutes, and; (g) again ordered her to comply with prior orders surrounding the confidential documents. Finally, the Court set a new hearing date of September 17, later changed to September 25, 2003.
23. On September 30, 2003, the Court entered an order memorializing its rulings at a September 25, 2003 hearing. In that order, Judge Morgan: (a) ruled Briggs had again failed to purge herself of contempt; (b) noted Briggs filed an affidavit that day listing numerous persons and entities to whom she sent copies of the confidential documents; (c) found that her dissemination of the documents was in violation of the Court's orders; (d) noted that during the hearing, when advised of her opportunity to cure her contempt, Briggs stated, "I'm not going to comply. That's it."; (e) noted that when warned by the Court her actions

bordered on criminal contempt, Briggs stated “I think the court’s conduct is criminal.”; (f) noted Briggs shouted and yelled at the Court, continuing to make various accusations; (g) directed that a transcript of the proceedings be made available to the U.S. Attorney’s Office for consideration of criminal contempt charges against Briggs, and; (h) incarcerated Briggs for approximately twenty-six hours. The Court also set a new hearing date of October 30, 2003.

24. At the hearing October 30, 2003, Briggs failed to appear at the appointed time. The Court reset the hearing for November 24, 2003, and ordered Briggs to show cause why she didn’t appear at the hearing time and why she had not complied with the Court’s prior orders.
25. At the hearing November 24, 2003, Briggs satisfactorily explained to the Court the reasons for her non-appearance on October 30. Briggs again expressed uncertainty as to the documents she was required to return to the City, and expressed surprise she was required to remove documents marked confidential from her pleadings and return those to the City. Briggs did return some documents to the City at the hearing. The Court set a farther hearing date of December 18, 2003.
26. At the hearing December 18, 2003, Briggs returned additional documents to the City and swore under oath she possessed no further copies of any documents covered by the Protective Order. The transcript makes it obvious that she had disseminated copies of such documents to third parties and, presumably, that third parties continued to possess such documents contrary to the terms and the spirit of the Protective Order. Briggs also expressed her intent to file new litigation possibly related to the Federal Case.
27. At the hearing before the Virginia State Bar Disciplinary Board Respondent admitted she had delivered copies of the confidential documents to a third party (the Judiciary Committee of the United States House of Representatives) in violation of the Districts Court’s Order, maintaining her action was in keeping with the highest professional standards of the VSB and the legal profession.
28. Following dismissal of the Federal Case referenced above, on December 4, 2001, Briggs filed another federal complaint, captioned *Donna M. Begs v. Kenneth Wills, Alan B. Rashkind and Furniss, Davis Rashkind and Sounders, P.C.*, in the United States District Court for the Eastern District of Virginia, Norfolk Division, Case No. 01-CV-903 (the Unlitigated Federal Case).
29. In the Unlitigated Federal Case the Respondent alleged that the defendants in the Federal Case, as well as their counsel Alan B Rashkind, his law firm and another lawyer, Kenneth Wills (Wills), conspired to falsely identify Wills as an eyewitness to Briggs’ March 1996 arrest, and alleged Wills testified falsely at his deposition when he said he witnessed the events surrounding the arrest.
30. Briggs never had the complaint in the Unlitigated Federal Case served on the named defendants, and there appear to be no admissible or competent proof of the alleged conspiracy of the named defendants or the alleged false testimony of Wills.

31. Throughout her testimony, Respondent asserted that her conduct was proper, that the court orders she violated were improper and she was justified in not complying with them. She claimed that trial transcripts introduced by the Bar were not accurate or had been altered (without offering anything to support such assertions) and that the District Court Judge was guilty of criminal conduct.

II. MISCONDUCT

Following argument for each side at the conclusion of the evidence regarding misconduct, the Board recessed to deliberate. The Board reviewed the foregoing findings of fact, the exhibits presented by Bar Counsel on behalf of the VSB as Exhibits 1–42 and the evidence presented by Respondent in the form of her own testimony and her Exhibits 1–10. After due deliberation (and after considering and denying various dismissal motions made by the Respondent) the Board reconvened and stated its findings as follows:

While some of the actions that resulted in the Determination for Certification occurred prior to 2000, the Bar has only asserted violations of the Professional Rules of Conduct which became effective on January 1, 2000. The Bar argued that the actions prior to 2000 should be considered as a part of a course of conduct continuing after January 1, 2000. The Board determined that findings of misconduct in these matters would be based on actions that occurred after January 1, 2000.

The Board determined that the Bar had proved by clear and convincing evidence that the Respondent violated each of the following *Virginia Rules of Professional Conduct*:

RULE 3.1 Meritorious Claims and Contentions

RULE 3.3 Candor Toward The Tribunal

(a) (1) ***

RULE 3.4 Fairness To Opposing Party And Counsel

(d), (f), (g), (j) ***

RULE 3.5 Impartiality And Decorum Of The Tribunal

(f) ***

RULE 4.4 Respect For Rights Of Third Persons

RULE 8.2 Judicial Officials

RULE 8.4 Misconduct

(b) (c) ***

III. DISPOSITION

Thereafter, the Board received further evidence of aggravation and mitigation from the Bar and Respondent, including Respondent’s prior disciplinary record. The Board recessed to deliberate what sanction to impose upon its findings of misconduct by Respondent. After due deliberation the Board reconvened to announce the sanction imposed. The Chair announced the sanction as revocation of Respondent’s license.

Accordingly, it is ORDERED that the Respondent, Donna Marie Briggs' license is REVOKED effective August 27, 2004.

ENTERED this 7th day of September, 2004
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: Peter A Dingman, Second Vice-Chair



VIRGINIA:
BEFORE THE DISCIPLINARY BOARD
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
ELIZABETH ANN MACK CALLAWAY
VSB DOCKET NO. 03-070-0212

**ORDER
(PUBLIC REPRIMAND WITH TERMS)**

On August 3, 2004, the Virginia State Bar, by Kathryn A. Ramey, Assistant Bar Counsel, and Respondent Elizabeth Ann Mack Callaway, Esquire, by counsel Frank B. Miller, III, Esquire, appeared before a duly convened panel of the Disciplinary Board consisting of Peter A. Dingman, Esquire, Chair presiding, Chester J. Cahoon, Jr., Lay Member, Robert E. Eicher, Esquire, Glen M. Hodge, Esquire and Joseph R. Lassiter, Jr., Esquire and, pursuant to Part Six, Section IV, Paragraph 13.B.5.c of the Rules of Court, presented an Agreed Disposition for a Public Reprimand with Terms for the Board's approval.

The Board, having reviewed the filings of the parties and considered the arguments of counsel, hereby accepts the Agreed Disposition and imposes upon Respondent Elizabeth Ann Mack Callaway, a Public Reprimand with Terms as follows:

I. FINDINGS OF FACT

The Board finds by clear and convincing evidence the following:

1. At all times relevant to this matter, Respondent was an attorney licensed to practice law in the Commonwealth of Virginia.
2. In September 2000, Complainants Samantha and Kathleen Williams retained Respondent for representation in a suit filed against them regarding the leasing of a horse.
3. Respondent failed to file a responsive pleading in a timely manner. The grounds of defense was filed two days late and the certificate of service was undated.
4. A hearing was scheduled on a motion for default judgment filed against Complainants. At the hearing, Respondent made no arguments on behalf of Complainants and signed the order for default judgment as "seen and not objected to."
5. Respondent failed to advise the Complainants that she had not responded to the motion for judgment in a timely manner and failed to inform them of the entry of the order for default judgment.
6. Respondent then represented Complainants at trial, where the sole issue was damages. Complainants were not aware

of default judgment during the trial, and Respondent did not inform them of it. The jury returned a verdict of \$87,000.00 in damages plus attorney's fees against Complainants.

7. Respondent moved to set aside the damages award. The judge reduced the damages to \$1, but did not vacate the award of attorney's fees, which totaled \$9,000.00. Complainants retained another attorney who unsuccessfully moved to set aside the default judgment.

II. RULES OF PROFESSIONAL CONDUCT

The Board hereby finds by clear and convincing evidence violations of the following Rules of Professional Conduct:

RULE 1.3 Diligence
(a), (b), (c) ***

RULE 1.4 Communication
(a), (b), (c) ***

III. IMPOSITION OF PUBLIC REPRIMAND WITH TERMS

Accordingly, the Board hereby imposes upon Respondent a Public Reprimand with Terms as follows:

By August 3, 2005, Respondent shall attend, in person, six (6) hours of MCLE-approved continuing legal education in the area of ethics and shall certify such attendance to Assistant Bar Counsel Kathryn A. Ramey, or her designee, at the Virginia State Bar, 707 E. Main St., Ste. 1500, Richmond, VA 23219. The six (6) hours of CLE shall not count toward Respondent's annual MCLE requirement and Respondent shall not submit these hours to the MCLE Department of the Virginia State Bar or any other Bar organization.

If Respondent fails to meet these terms within the time specified, the Board shall impose a thirty (30) day suspension as an alternative sanction. If there is disagreement as to whether the terms were fully and timely completed, the Board will conduct a hearing on the issue. At the hearing, the sole issue shall be whether Respondent fully completed the terms within the time specified above. The Respondent shall have the burden of proof by clear and convincing evidence at the hearing.

Entered this 6th day of August, 2004
By: Peter A. Dingman, Second Vice Chair
Virginia State Bar Disciplinary Board



VIRGINIA:
BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
MAC ANDRES CHAMBERS
VSB DOCKET NOS. 03-080-4043 (PREVIOUSLY 00-080-0491) (COMPLAINANT: Ms. JANIS GOLDING); 03-080-4052 (PREVIOUSLY 01-080-0087) (COMPLAINANT: Ms. PAMELA REYES); AND 03-080-4051 (PREVIOUSLY, 01-080-0970) (COMPLAINANT: VSB/McCONNELL)

ORDER OF REVOCATION

THIS MATTER came on to be heard on June 25, 2004, before a panel of the Disciplinary Board consisting of Roscoe B. Stephenson, III, Chair, William M. Moffet, Ann N. Kathan, H. Taylor Williams, IV and Donna A. DeCorleto, Lay Member. The Virginia State Bar was represented by Edward L. Davis, Assistant Bar Counsel. The Respondent, Mac Andres Chambers (the "Respondent"), appeared via telephone and represented himself. The Chair polled the members of the Board Panel as to whether any of them was conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative.

Three matters came before the Board involving the Respondent. Docket Nos. 03-080-4043 and 03-080-4052 came before the Board on the Certification for Sanction Determination of the Eighth District Committee as a result of the Respondent's failures to comply with the terms imposed by the two public reprimands issued to the Respondent by the Eighth District Committee on June 26, 2001. Docket No. 03-080-4051 came before the Board on the District Committee Determination (Certification) issued by the Eighth District Committee on July 31, 2003.

I. FINDINGS OF FACT

The VSB's exhibits, presented collectively as Exhibit 1, were admitted without objection. The Board first addressed Docket No. 03-080-4051, which involves the Edward L. Comeaux and the Allen D. Cooper matters relating to traffic cases. Thereafter, the Board addressed Docket Nos. 03-080-4052 and 03-080-4043.¹ The Board makes the following findings of fact regarding Docket No. 03-080-4051 on the basis of clear and convincing evidence:

1. At all times relevant hereto, the Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia and his address of record with the Virginia State Bar is 3158 Berry Lane SW, Apartment 84, Roanoke, Virginia 24018. The respondent received proper notice of these proceedings, as well as the proceedings relating to as required by Part Six, § IV, ¶ 13 (E) and (I)(a) of the Rules of Virginia Supreme Court.

The Edward L. Comeaux Matter

2. During 2000, Mr. Chambers participated in a pre-paid legal services program. As a result of Mr. Chambers' participation in this program, Oklahoma attorney James E. Mennella sent a facsimile to Mr. Chambers on July 13, 2000 asking if he could accept the reckless driving case of Edward L. Comeaux. The letter advised that Mr. Comeaux's trial was on July 21, 2000, and that Mr. Mennella would

FOOTNOTE

1. Because these two matters come before the Board on a Certification for Sanction Determination whereby the Eighth District Committee had ruled unanimously that the Respondent had failed to carry out his burden of proving compliance with the terms of the public reprimands and that alternate dispositions should be imposed, the Board's charge pursuant to the recently amended Rules of Court, Part Six, Section IV, Paragraph 13.1.4.(c) and (d) was to hear evidence only of mitigation and aggravation with respect to compliance or certification and to determine the appropriate sanction.

arrange for Mr. Comeaux to be present. The attached warrant indicated that the defendant was charged with reckless driving, was released on a cash bond, and that the case was scheduled to be heard on July 21, 2000 in the Montgomery County General District Court. Mr. Mennella attached a fee agreement for \$200.00.

3. During a telephone conversation on July 20, 2000, Mr. Chambers advised Mr. Mennella's staff that he would accept the case. Accordingly, Mr. Mennella sent a check in the amount of \$200.00 which Mr. Chambers deposited in his attorney trust account.
4. Neither Mr. Chambers nor the defendant appeared in court on July 21, 2000, and the defendant was tried in his absence, found guilty of reckless driving, and fined \$500.00. On July 25, 2000, Mr. Chambers advised Mr. Mennella's staff that the case was set to be heard on August 28, 2000, and that Mr. Comeaux would need to appear in person.
5. Mr. Chambers, however, never appeared in court on August 28, 2000 because the case was never scheduled for that day. He tried to resolve matters with the court and the Commonwealth's Attorney during the following months, but it was too late.

The Allen D. Cooper Matter

6. On April 12, 2000, Missouri truck driver Allen J. Cooper was issued a summons for speeding, with trial scheduled for June 28, 2000 in the Montgomery County General District Court. Mr. Cooper did not appear, was tried in his absence, found guilty as charged and fined \$39.00.
7. On July 18, 2000, pursuant to Mr. Chambers' participation in the prepaid legal services program, Mr. Mennella sent him a letter by facsimile asking for his assistance with the case. The letter explained that the court never received Mr. Mennella's prior request for a continuance, but that the court said that a motion to rehear could be filed up to July 21, 2000. In August 2000, Mr. Chambers accepted a \$200.00 fee from Mr. Mennella that he deposited in his attorney trust account. Thereafter, he took no further action, and Mr. Cooper's conviction stood.
8. Mr. Chambers tried to resolve matters with the court and the Commonwealth's Attorney during the following months, but it was too late.

Miscellaneous

9. Mr. Chambers explained that in each case, his assistant/paralegal, Mr. Hebblethwaite, contacted the court to arrange continuances to August 28, 2000, but never confirmed the continuances by letter, and never entered them on Mr. Chambers' calendar. The Cooper matter, however, was already tried on June 28, 2000, and Mr. Chambers was hired only to seek a rehearing.
10. In November 2000, Mr. Chambers received the VSB complaint authored by Mr. McConnell, but never responded, explaining that he was trying to resolve the matters with the Montgomery County Court Clerk and Commonwealth's Attorney.

II. MISCONDUCT

Docket No. 03-080-4051 (Previously No. 01-080-0970)

The Certification in Docket No. 03-080-4051 charged violations of the following provisions of the Virginia Rules of Professional Conduct:

RULE 1.1 Competence

RULE 1.3 Diligence

(a) ***

RULE 1.4 Communication

(a), (c) ***

III. DISPOSITION

Upon review of the foregoing findings of fact relating to Docket No. 03-080-4051, upon review of exhibits presented by Bar Counsel on behalf of the VSB, and upon evidence presented by Respondent in the form of his own testimony, and at the conclusion of the evidence regarding misconduct, the Board recessed to deliberate. After due deliberation the Board reconvened and stated its unanimous findings as follows:

1. The Board determined that the Bar did prove by clear and convincing evidence that the Respondent was in violation of Rule 1.1 in that the Respondent did not provide the "thoroughness and preparation reasonably necessary for the representation." However, the Bar did not prove by clear and convincing evidence under Rule 1.1 that the Respondent lacked the legal knowledge or the skill required for the representation.
2. The Board determined that the Bar did prove by clear and convincing evidence that the Respondent was in violation of Rule 1.3(a).
3. The Board determined that the Bar did prove by clear and convincing evidence that the Respondent was in violation of Rule 1.4(a) and (c).
4. Furthermore, pursuant to the Rules of Court, Part Six, Section IV, Paragraph 13.I.4, the Board accepts the findings of misconduct of the Eighth District Committee in Docket Nos. 03-080-4043 and 03-080-4052.

Thereafter, the Board received further evidence of aggravation and mitigation from the Bar and Respondent, including Respondent's prior disciplinary record, for all three matters. The Board recessed to deliberate what sanction to impose upon its findings of misconduct by Respondent. After due deliberation the Board reconvened to announce the sanction imposed. The Chair announced the sanction as revocation of the Respondent's license to practice law in the Commonwealth of Virginia.

The Board's unanimous sanction decision is based upon the totality of the circumstances. First, the Board finds that the VSB has exercised incredible patience regarding the Respondent and has given him more than ample time to fulfill the requirements of the Respondent's public reprimand and to rehabilitate himself. However, the Respondent, by his own admissions, has

failed to fulfill those requirements and the Board finds that the Respondent's many explanations as to why he could not fulfill the continuing legal education requirements of the public reprimands are not credible.

Second, the Respondent explained that he is suffering from multiple serious physical and mental health problems, and at most times he is heavily medicated in order to manage the pain resulting from these problems. Under these circumstances the Board finds that the Respondent's ability to practice law is severely impaired and that he should not be handling client matters.

Finally, the Board is deeply concerned about the Respondent's disciplinary record, particularly the Agreed Order that was entered into by the Respondent and the VSB just shortly before the July 25, 2004 Board hearing. Instead of resolving matters and rehabilitating himself, the Respondent continues to decline and the threat of substantial harm to the public is great. It is for these reasons that the Board believes revocation is the appropriate sanction.

Accordingly, it is ORDERED that the license of Respondent, Mac Andres Chambers, to practice law in the Commonwealth of Virginia is hereby revoked effective June 25, 2004.

ENTERED this 14th day of July 2004
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 Roscoe B. Stephenson, III, Chair



VIRGINIA:
 BEFORE THE DISCIPLINARY BOARD
 OF THE VIRGINIA STATE BAR

IN THE MATTER OF
ROBERT WILLIAM GOOKIN, ESQUIRE
 VSB DOCKET NOS: 02-041-1061
 03-041-1066
 03-041-1994
 03-041-2533
 03-041-2784

ORDER OF SUSPENSION

On July 23, 2004 this matter came before a duly convened panel of the Virginia State Bar Disciplinary Board consisting of Karen A. Gould, Chair, Bruce T. Clark, Robert E. Eicher, Ann N. Kathan, and Werner H. Quasebarth, lay member. The Bar was represented by Marian L. Beckett, Assistant Bar Counsel. The Respondent appeared and was represented by Timothy J. Battle.

At the outset of the hearing, the Chair polled the members of the panel to determine whether any member had any business or financial interests or any personal bias that would impair could be perceived to impair his or her ability to hear the matters to come before the panel fairly and impartially. Each member, including the Chair, responded in the negative.

By agreement between the Bar and the Respondent, the following Stipulations of Fact and Misconduct were submitted to the Panel:

A. STIPULATION OF FACTS

1. At all times relevant hereto, the Respondent, Robert William Gookin, (hereinafter Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.

As to VSB Docket No. 02-041-1061

2. The Respondent served as court appointed counsel for the Complainant, Ben Frank Moore (hereinafter the Complainant) related to charges of robbery and use of a firearm in the commission of a felony. The Complainant was found guilty by a jury and was sentenced to six years imprisonment for the robbery and three years for the firearm charge.
3. The Respondent filed a Petition for Appeal to the Court of Appeals of Virginia on behalf of the Complainant. Such petition was denied. The Respondent failed to inform the Complainant of the denial of his appeal to the Court of Appeals of Virginia, failed to advise the Complainant of his further right to appeal and failed to file a further appeal to the Virginia Supreme Court.
4. The Respondent further failed to provide the Complainant with a copy of the trial transcript on Complainant's request.

As to VSB Docket No. 03-041-1066

5. The Respondent served as court-appointed appellate counsel for a defendant who was convicted of three counts of embezzlement following a three day jury trial.
6. The Respondent filed a Petition for Appeal consisting of six sentences in its entirety. The Petition for Appeal failed to comply with Rules 5A:12(c), 5A:20(c), 5A:20(d) and 5A:20(e) of the Rules of the Supreme Court of Virginia; failed to include any legal authority to support appellant's position; and included remarks which the Complainant found offensive.
7. The complainant is the Honorable Robert J. Humphreys of the Virginia Court of Appeals. In his October 8, 2002 Order, Judge Humphreys admonished the Respondent for the reasons noted above, denied the Respondent fees for serving as a court-appointed counsel, and removed the Respondent from the list of attorneys approved for appointment by the Court of Appeals.

As to VSB Docket No. 03-041-1994

8. The Respondent served as court-appointed appellate counsel for the Complainant, Francisour Kemache-Webster, who was indicted for failure to return a rental car. The Complainant failed to appear for the commencement of his trial, was tried in his absence, and was found guilty of larceny.
9. The Respondent filed a Petition for Appeal but failed to have the trial transcript made a part of the record forwarded to the Court of Appeals. As a result of such failure, the Appeal was dismissed. In his response to the Bar complaint, the Respondent stated that the error involved was made by the court reporter.
10. The Complainant was subsequently awarded a delayed appeal pursuant to a Habeas Corpus Petition.

As to VSB Docket No. 03-041-2533

11. The Respondent served as court-appointed trial and appellate counsel for the Complainant, Francis Gonzales (hereinafter the Complainant).
12. The Complainant's jury trial was completed on March 6, 2002. The deadline for filing the trial transcripts for appeal was August 6, 2002. The Respondent did not file the transcripts until August 7, 2002. In addition to failing to file the transcripts by the date required, the sentencing transcript was omitted from those filed.
13. On September 26, 2002, the Virginia Court of Appeals directed the appellant to show cause on or before October 11, 2002 why the appeal should not be dismissed. The Respondent failed to respond to the show-cause order.
14. On October 18, 2002, the Court of Appeals dismissed the case for failure to timely file the conviction hearing and sentencing hearing transcripts, and for failure to respond to the show-cause order.
15. The Complainant was subsequently awarded a delayed appeal pursuant to a Habeas Corpus Petition.

As to VSB Docket No. 03-041-2784

16. The Respondent served as court-appointed sentencing and appellate counsel for the Complainant, Eric Keys (hereinafter the Complainant).
17. Commencing in August of 2002, the Complainant requested information from the Respondent regarding the status of the Complainant's appeal to the Supreme Court of Virginia. On or about March 6, 2003, the Respondent wrote a letter of apology regarding his failure to inform the Complainant of the denial of the appeal. The Respondent informed the Complainant in the March 6 correspondence that the Respondent thought that the Complainant would have been informed of the denial by other sources.

B. STIPULATION OF MISCONDUCT

The aforementioned conduct on the part of the Respondent constitutes a violation of the following Virginia Rules of Professional Conduct:

RULE 1.1 Competence

RULE 1.3 Diligence

(a) ***

RULE 1.4 Communication

(a), (b), (c) ***

RULE 8.4 Misconduct

(a), (b) ***

C. THE BOARD'S FINDINGS

Having received the stipulations set forth above and having considered the evidence presented at the hearing clarifying

same, the Panel finds that the Respondent has violated the Rules of Professional Conduct set forth in the parties' stipulations save for Rule 8.4(b). As to Rule 8.4(b), the Panel finds the evidence presented as to the same together with the stipulated facts do not rise to the level required to find a violation of this rule.

Taken alone, the Panel believes that no single violation committed by the Respondent now before the Panel would merit a response greater than a public reprimand. However, the Panel must take into consideration the number of violations that occurred within a limited time period which, when taken together, indicate that the Respondent displayed an unacceptable level of indifference towards his duties to his clients. This finding is tempered, however, by the fact that the Respondent has no prior disciplinary record and that during his practice he has represented over one thousand criminal clients without further complaints. The matters before the Board appear to be aberrations. It is also noted that the Respondent has taken action to implement a calendar system to prevent further similar occurrences and has voluntarily attended a CLE on the appeals process. The Panel therefore finds that the appropriate sanction is a **SUSPENSION** for a period of thirty (30) days commencing on August 14, 2004 and ending at midnight on September 12, 2004 and it is so **ORDERED**. The Respondent is also advised that he should put a tickler system into place to prevent missed deadlines.

ENTERED this 29th day of July, 2004
VIRGINIA STATE BAR DISCIPLINARY BOARD

Karen A. Gould, Chair



VIRGINIA:
BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
THOMAS LEROY JOHNSON JR.
VSB DOCKET NO. 04-000-3403

ORDER OF SUSPENSION

On June 25, 2004, this matter came on for a hearing upon the Show Cause Order and Order of Suspension and Hearing dated June 25, 2004, before a panel of the Virginia State Bar Disciplinary Board consisting of Karen A. Gould, Chair, David R. Schultz, John A. Dezio, Deborah A. J. Wilson, Chester J. Cahoon, Jr., Lay Member. The Virginia State Bar was represented by Linda M. Berry. The Respondent, Thomas Leroy Johnson, Jr., did not appear nor was he represented at the hearing, by counsel. The Chair polled the members of the Board Panel as to whether any of them was conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative.

I. FINDINGS OF FACT

Having considered VSB Exhibits one through seven entered into evidence by Bar Counsel, the Board unanimously found by clear and convincing evidence as follows:

1. At all times relevant hereto, Thomas Leroy Johnson, Jr., hereinafter the "Respondent", has been an attorney licensed to practice law in the Commonwealth of Virginia

on October 11, 1995, and his address of record with the Virginia State Bar has been The Gee Law Firm, 5900 Midlothian Tnpk., Richmond, VA 23225. The Respondent received proper notice of this proceeding as required by Part Six, § IV, Paragraph 13(E) and (I)(a) of the Rules of the Virginia Supreme Court.

2. On May 7, 2004 the United States Court of Appeals for the Fourth Circuit suspended the Respondent from practice before such Court until such time as he is reinstated to the practice of law in the United States District Court for the Eastern District of Virginia, Richmond Division, and petitions the Court of Appeals for reinstatement.
3. Pursuant to a Rule to Show Cause, the United States District Court for the Eastern District of Virginia, Richmond Division, entered an order effective April 27, 2004 disbarring Respondent from the practice of law before such Court for engaging in the following conduct:
 - (a) Knowingly and intentionally filing a voucher dated August 4, 2003 for payment pursuant to the Criminal Justice Act, containing a material false statement, namely that Thomas L. Johnson, Jr. had not received payment or compensation from anyone else in connection with his representation in the case of Travis Williams, when in truth and in fact Johnson had received a cash payment of \$1,000.00; and soliciting payment over and above the standard Criminal Justice Act court-appointed counsel fee, in the case of Curtis Dickerson, by representing that Thomas L. Johnson, Jr. would more zealously represent Mr. Dickerson if he were paid an additional sum of money, in violation of Virginia Rules of Professional Conduct 8.4(b) & (c), as well as 18 U.S.C. Section 1001.
 - (b) Submitting a letter to the Honorable James R. Spencer, United States District Judge, which included a knowing and intentional falsehood in Mr. Johnson's explanation of the above-described voucher for payment, in violation of Virginia Rules of Professional Conduct 3.3(a)(1).

4. By Rule to Show Cause and Order of Suspension and Hearing dated May 27, 2004, Respondent's license to practice law in Virginia was immediately suspended pursuant to the Rules of Court, Part Six, § IV, Paragraph 13(I)(7) and the Respondent was ordered to appear before the Virginia State Bar Disciplinary Board at 9:00 a.m. on June 25, 2004, to show cause why his license to practice law within the Commonwealth of Virginia should not be further suspended.

II. DISPOSITION

Paragraph 13(I)(7)(e), Part Six, § IV of the Rules of the Supreme Court of Virginia, entitled "Disbarment or Suspension in Another Jurisdiction" provide in relevant part:

- (c) The Respondent shall have the burden of proof, by a clear and convincing evidentiary standard . . . and shall be limited to at the hearing to proof of the specific contentions raised in any written response. . . . Except to the extent the allegations of the written response are established, the findings in the other jurisdiction shall be conclusive of all matters for the purposes of the Proceeding before the Board.

- (d) If the Respondent has not filed a timely written response, or does not appear at the hearing or if the Board, after a hearing, determines that the Respondent has failed to establish the contentions of the written response by clear and convincing evidence, the Board shall impose the same discipline as was imposed in the other jurisdiction. . . .

The Board finds that Respondent has not furnished any evidence or reasons as to why it should not impose the same discipline as was imposed in the United States District Court for the Eastern District of Virginia, Richmond Division.

It is therefore ORDERED pursuant to Paragraph 13(D)(7)(f) of the Rules of the Supreme Court of Virginia that the license of the Respondent, Thomas Leroy Johnson, Jr. to practice law in the Commonwealth of Virginia be, and the same is hereby suspended for a period of four (4) years, effective May 27, 2004.

ENTERED this 1st day of July, 2004
Karen A. Gould, Chair
VIRGINIA STATE BAR DISCIPLINARY BOARD



VIRGINIA
BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
JAMES FLOYD KELLEY
VSB DOCKET No. 05000-0394

ORDER

Pursuant to Part Six, Section IV, Paragraph 13.I.6. of the Rules of the Virginia Supreme Court, the Virginia State Bar, by Bar Counsel Barbara Ann Williams, petitioned the Disciplinary Board to find that attorney James Floyd Kelley suffers from a disability and, based upon that finding, to suspend Mr. Kelley indefinitely from the practice of law in the Commonwealth of Virginia.

Based upon the evidence presented, and Mr. Kelley's agreement to an entry of an indefinite disability suspension, for good cause shown, the Disciplinary Board finds that Mr. Kelley is disabled, and it is hereby ORDERED that Mr. Kelley is suspended from the practice of law in Virginia until such time as the Disciplinary Board determines he is no longer disabled.

Enter August 27, 2004
Virginia State Bar Disciplinary Board
Karen A. Gould, Chair



VIRGINIA:
BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
LESLIE WAYNE LICKSTEIN, ESQUIRE
VSB DOCKET NUMBER 05-000-0543

ORDER AND OPINION

This matter came before the Virginia State Bar Disciplinary Board on September 20, 2004 upon an Agreement to Imposition of Reciprocal Discipline, as a result of a Rule to Show Cause and Order of Suspension and Hearing entered on August 27, 2004. A duly convened panel of the Virginia State Bar Disciplinary Board consisting of V. Max Beard, lay member, William H. Monroe, Esquire, Russell W. Updike, Esquire, Robert E. Eicher, Esquire, and Peter A. Dingman, Esquire, presiding, heard the matter. Noel D. Sengel, Senior Assistant Bar Counsel, appeared as Counsel to the Virginia State Bar ("VSB"), and David R. Rosenfeld appeared as counsel for the Respondent.

Having considered the Agreement to the Imposition of Reciprocal Discipline, the Board finds by clear and convincing evidence as follows:

STIPULATIONS OF FACTS

- 1. At all times relevant hereto, the Respondent, Leslie Wayne Lickstein, Esquire (hereinafter Respondent) has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On July 2, 2004, the United States Bankruptcy Court for the Eastern District of Virginia, Alexandria Division, entered an order suspending the Respondent's license to practice law in that court for a period of five years based upon an agreed Joint Stipulation of Facts as set forth in that order. The Board hereby adopts the Joint Stipulation of Facts as set forth in the United States Bankruptcy Court's order of July 2, 2004 as the Stipulation of Facts in this Order. The Order of the United States Bankruptcy Court of July 2, 2004 is attached hereto and incorporated herein as Exhibit #1.

STIPULATIONS OF MISCONDUCT

The aforementioned conduct on the part of the Respondent constitutes a violation of the following Rules of Professional Conduct:

RULE 3.3 Candor Toward The Tribunal

- (a) (1), (2) ***

RULE 4.1 Truthfulness In Statements To Others

- (a), (b) ***

RULE 8.4 Misconduct

- (b), (c) ***

Upon consideration of the Agreement to Imposition of Reciprocal Discipline before this panel of the Disciplinary Board, it is hereby ORDERED that, pursuant to Part 6, IV, ¶ 13(D)(7) of the Rules of Virginia Supreme Court, the license of Respondent, Leslie Wayne Lickstein, Esquire, to practice law in the Commonwealth of Virginia shall be, and is hereby, suspended for a period of five (5) years, commencing October 1, 2004.

SO ORDERED, this 24th day of September, 2004.
By: Peter A. Dingman, Second Vice Chair



VIRGINIA:

BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF

DAVID NICHOLLS MONTAGUE

VSB DOCKET NO. 04-010-1921

ORDER OF PUBLIC REPRIMAND

This matter came to be heard on September 21, 2004, upon an Agreed Disposition between the Virginia State Bar and the Respondent, David Nicholls Montague.

A duly convened panel of the Virginia State Bar Disciplinary Board consisting of Glenn M. Hodge, Esquire, Russell W. Updike, Esquire, Robert E. Eicher, Esquire, Thaddeus T. Crump, Lay Member, and Peter A. Dingman, Esquire, Second Vice Chair, considered the matter by telephone conference. The Respondent, David Nicholls Montague, participated, as did Edward L. Davis, Assistant Bar Counsel, on behalf of the Virginia State Bar.

Upon due deliberation, it is the unanimous decision of the board to accept the Agreed Disposition. The Stipulations of Fact, Disciplinary Rule Violations, and Disposition agreed to by the Virginia State Bar, the Respondent and his counsel are incorporated herein as follows:

I. STIPULATIONS OF FACT

1. During all times relevant hereto, the Respondent, David Nicholls Montague (hereinafter Respondent or Mr. Montague) was an attorney licensed to practice law in the Commonwealth of Virginia, except for a ninety-day period beginning June 28, 2002, when his license to practice law was suspended by the Virginia State Bar Disciplinary Board, and from October 24, 2003 when the Board suspended his license again for two years.
2. During February 2001, Donna Rogers met with Mr. Montague concerning her divorce.
3. Mr. Montague prepared a bill of complaint that Ms. Rogers endorsed on May 1, 2001.
4. On or about that time, Ms. Rogers paid Mr. Montague \$500 for attorney's fees and \$76 for filing fees.
5. In addition to the bill of complaint, Mr. Montague prepared a motion to grant Ms. Rogers exclusive use of the marital home.
6. Mr. Montague understood that Mrs. Rogers was in tremendous fear of her husband and that, therefore, she did not want Mr. Montague to file the bill of complaint or the motion pending further instruction from Ms. Rogers.
7. In October 2003, the file being inactive, Mr. Montague's administrative assistant called Ms. Rogers and asked her to come to the office to review the pleadings and endorse them if she wanted her divorce.
8. On or about October 22, 2003, Ms. Rogers came to the office and reviewed the pleadings.
9. The same date, October 22, 2003, someone updated the bill of complaint by pen and ink; however, it was never filed.

10. Two days later, on October 24, 2003, Mr. Montague appeared before the Virginia State Bar Disciplinary Board where his license to practice law was suspended for a period of two years.
11. Mr. Montague says that he prepared a letter to notify Ms. Rogers about the suspension of his law license, and like a number of other letters he mailed, the letter was not delivered; however, there was no evidence of this among the materials that he sent to the bar in accordance with Paragraph 13.M, Part 6, Section IV of the Rules of Court. The bar's records, however, show that Mr. Montague did notify approximately one hundred other clients about the suspension of his license.
12. Ms. Rogers attempted to reach Mr. Montague by telephone to ascertain the status of her case, but could not reach him.
13. On or about January 6, 2004, having not heard from Mr. Montague, Ms. Rogers went to his office and found it closed up. Upon inquiry at an office next door, she learned for the first time that his license had been suspended.
14. Ms. Rogers then contacted Mr. Montague at his home. On February 2, 2004, he issued her a partial refund in the amount of \$298.50. (Mr. Montague kept \$277.50 of the \$500 advance fee, representing 1.5 hours at \$185 per hour, leaving a balance of \$222.50 plus the filing fee.) On June 24, 2004, Mr. Montague refunded the rest of the money advanced by Ms. Rogers, having on reflection concluded that his services had not been beneficial to her.
15. The initial refund issued by Mr. Montague, which included the filing fee, was by check drawn on a personal account.
16. When Mrs. Rogers called Mr. Montague at home, he gave her the name of another lawyer whom he held in high regard. He sent her entire file back on February 3, 2004.

II. DISCIPLINARY RULE VIOLATIONS

The parties agree that the foregoing facts give rise to violations of the following Rules of Professional Conduct:

RULE 1.3 Diligence

(a) ***

RULE 1.15 Safekeeping Property

(a) (1), (2) ***

RULE 1.16 Declining Or Terminating Representation

(d) ***

III. DISPOSITION

In accordance with the Agreed Disposition, it is the decision of the Disciplinary Board to Issue a Public Reprimand, and the Respondent, David Nicholls Montague, is hereby reprimanded effective upon entry of this order.

ENTERED THIS 23rd DAY OF September, 2004
THE VIRGINIA STATE BAR DISCIPLINARY BOARD
By Peter A. Dingman, 2nd Vice Chair



VIRGINIA:

BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF

STEPHEN JOHN PERRELLA

VSB DOCKET NO. 05-000-0025

ORDER OF REVOCATION

On August 27, 2004, this matter came on for a hearing upon the Show Cause Order and Order of Suspension and Hearing dated July 29, 2004, before a panel of the Virginia State Bar Disciplinary Board consisting of Peter A. Dingman, 2nd Vice-Chair, David R. Schultz, James L. Banks, Jr., Glenn M. Hodge and V. Max Beard, Lay Member. The Virginia State Bar was represented by Richard E. Slaney. The Respondent, Stephen John Perrella, did not appear nor was he represented at the hearing, by counsel. The Chair polled the members of the Board as to whether any of them was conscious of any personal or financial interest or bias which would preclude any of them from fairly hearing this matter and serving on the panel, to which inquiry each member responded in the negative.

I. FINDINGS OF FACT

Having considered the VSB Exhibits entered into evidence by Bar Counsel, the Board unanimously found by clear and convincing evidence as follows:

1. At all times relevant hereto, Stephen John Perrella, hereinafter the “Respondent”, has been an attorney licensed to practice law in the Commonwealth of Virginia on October 12, 1989, and his address of record with the Virginia State Bar has been 917 F Avenue, #3, Coronado, CA 92118. The Respondent received proper notice of this proceeding as required by Part Six, § IV, Paragraph 13.E and I.2 of the Rules of the Virginia Supreme Court
2. Respondent was convicted of burglary 2nd degree on October 25, 2003; petty theft with prior on December 18, 2002; and possession of a controlled substance on February 18, 2002 in the Superior Court of California, County of San Diego.
3. Respondent has been convicted of a crime, as defined by the Rules of Court, Part 6, Section IV, p. 13.I.5.b.
4. By Rule to Show Cause and Order of Suspension and Hearing dated July 29, 2004, Respondent’s license to practice law in Virginia was immediately suspended pursuant to the Rules of Court, Part Six, § IV, Paragraph 13.I.5.b and the Respondent was ordered to appear before the Virginia State Bar Disciplinary Board at 9 a.m. on August 27, 2004, to show cause why his license to practice law within the Commonwealth of Virginia should not be further suspended or revoked.

II. DISPOSITION

Paragraph 13.I.5.b and c, Part Six, § IV of the Rules of the Supreme Court of Virginia, entitled “Guilty Plea or Adjudication of a Crime” and “Action by the Board” provide in relevant part:

- (b) Whenever the Clerk of the Disciplinary System receives written notification from any court of competent juris-

diction stating that an Attorney (the “Respondent”) has been found guilty or convicted of a Crime by a Judge or jury, pled guilty to a Crime or entered a plea wherein the facts found by a court would justify a finding of guilt, irrespective of whether sentencing has occurred, a member of the Board shall forthwith and summarily issue an order of Suspension on behalf of the Board against the Respondent and shall forthwith cause to be served upon the Respondent: a copy of the written notification from the court; a copy of the Board member’s order; and a notice fixing the time and place of a hearing to determine whether Revocation or further Suspension is appropriate.

- (c) Action by the Board at the Hearing

If the Board finds at the hearing that the Respondent has been found guilty or convicted of a Crime by a Judge or jury, pled guilty to a Crime or entered a plea wherein the facts found by a court would justify a finding of guilt, an order shall be issued, and a copy thereof served upon the Respondent in which the Board shall:

- (1) continue the Suspension or issue an order of Suspension against the Respondent for a stated period not in excess of five years; or
- (2) issue an order of Revocation against the Respondent.

The Board finds that Respondent has committed a crime and has not furnished any evidence or reasons as to why it should not issue an Order of Revocation against the Respondent.

It is therefore ORDERED pursuant to Paragraph 13.I.5.b and c of the Rules of the Supreme Court of Virginia that the license of the Respondent, Stephen John Perrella, to practice law in the Commonwealth of Virginia be, and the same is hereby revoked effective August 27, 2004.

* * *

ENTERED this 20th day of September, 2004
Peter A. Dingman, 2nd Vice-Chair
VIRGINIA STATE DISCIPLINARY BOARD



[Editor’s Note: Respondent has filed an appeal to the Virginia Supreme Court.]

VIRGINIA:

BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF:

DOMINICK ANTHONY PILLI

VSB DOCKET NO. 02-051-2053

ORDER

THIS MATTER came before the Virginia State Bar Disciplinary Board for hearing pursuant to a Subcommittee

Determination (Certification) issued January 8, 2004, certifying charges of misconduct against Respondent for hearing before the Board. The charges were duly noticed for hearing June 25, 2004, and subsequently continued for hearing on August 27, 2004. The matter was heard on that date by a panel of the Board, consisting of Karen A. Gould, Chair, Dr. Theodore Smith, lay member, William C. Boyce, Joseph R. Lassiter, Jr. and H. Taylor Williams, IV. Each member of the panel was requested by the Chair to state whether he was aware of any personal or financial interest which would affect or reasonably be perceived to affect his ability to be impartial in this case, all members responding in the negative. The Virginia State Bar (the "Bar") was represented by Noel D. Sengel, Senior Assistant Bar Counsel. Timothy J. Battle, Esquire, appeared on behalf of the Respondent, Dominick Anthony Pilli, who was present at the proceedings.

The Bar then moved into evidence a binder containing nineteen pre-numbered exhibits, all but one of which were admitted without objection. Respondent objected to the admission of Exhibit 17, which consisted of a letter addressed to the Bar and to the Board dated December 28, 2001, whereby Respondent transmitted to the addressees a copy of a judicial complaint which he had that day filed with the Judicial Inquiry and Review Commission, on the grounds that the complaint was privileged pursuant to Virginia Code Section 2.1-37.13. The panel having found that the privilege was waived by the transmission of the complaint to the Bar and to the Board, the objection was overruled, and the entire binder of exhibits was admitted as Bar Exhibit 1. The Bar objected to Respondent's renewal of his motion to call a witness not listed on his pretrial exhibit list, which motion had been sustained by the Board Chair in a pre-hearing conference. In accordance with the rules of these proceedings, the panel retired to consider the motion and the ruling, whereupon the Bar had the clerk inform the panel that it was withdrawing its objection. During the proceedings, the Bar offered for admission an Affidavit signed by Molly Coleman, which was admitted without objection as Bar Exhibit 2. All references in this opinion shall be to the numbered exhibits in Bar Exhibit 1, and Bar Exhibit 2 will be identified as the Coleman Affidavit.

SUMMARY OF CASE

The events leading to this bar complaint were variously described in opening statements as a case of "making a mountain out of a mole hill" (bar counsel) and as a case of "the dog ate my homework" (counsel for Respondent). Both statements accurately describe the situation.

Respondent was issued a criminal show cause summons by Judge Michael Cassidy of the Fairfax County General District Court arising from Mr. Pilli's failure to appear in court on October 16, 2001, for trial of a hit and run accident charge in which he was defense counsel of record. Mr. Pilli was perhaps understandably operating under the assumption that he had continued the matter from the original trial date to a date other than October 16, since he had filed a motion for continuance in which he informed the court that he was not available on that date and provided January 17 as the police officer's next available date. Indeed, he informed his client by letter dated September 26, 2004, that the court date had been continued to January 17. There was a dispute as to whether Mr. Pilli's office confirmed with the court that the case had been continued to the January 17 date that he had requested. The court over-

looked the continuance motion and continued the case to October 16.

The Show Cause summons against Mr. Pilli was set for trial on December 11, 2001. Learning of the issuance of the summons, Respondent attempted to rectify the situation with the court informally. Informed by court order entered October 18, 2001, that the case would be dealt with on December 11, Mr. Pilli appeared in the courthouse on that date. Finding the case on the docket in a courtroom other than Judge Cassidy's courtroom, Respondent checked in with the clerk and asked that the case be dropped down due to the long docket in that courtroom and Mr. Pilli's need to appear briefly on that same day in the Fairfax City General District Court, a common practice in Fairfax. During Mr. Pilli's absence, the case was transferred to Judge Cassidy's courtroom at his request, and he was tried in absentia, held in contempt and fined \$250.00. Shortly thereafter Respondent returned to the Fairfax County courthouse, discovered that the case had been transferred to Judge Cassidy's courtroom. Learning of the conviction, he filed a motion to rehear, which was heard the next day. At that time Judge Cassidy suspended all but \$100.00 of the fine, but the conviction stood.

By that time Mr. Pilli and Judge Cassidy were clearly at odds. In the court's order of December 11 (Bar Ex. 13), which found Mr. Pilli in contempt, Judge Cassidy referred to the original continuance motion filed by Mr. Pilli, and seemed to have no problem with the fact that the case was continued to a date that Respondent had advised the court was unavailable for him. The order went on to state that Mr. Pilli failed to make himself available for service of the contempt citation. The order stated that Mr. Pilli had exhibited a disregard for the scheduling practices of the court, failed to make himself available for service of the show cause, and failed to appear for the show cause hearing. Following the rehearing on December 12, Judge Cassidy issued a Supplemental Order (Bar Ex. 15), in which he excused the failure to appear at the show cause hearing on December 11 and suspended \$150.00 of the previously imposed fine. Judge Cassidy testified before the Board, and stated that he was concerned about what he felt were "shifting explanations" that he was receiving from Mr. Pilli. Originally, according to Judge Cassidy, Mr. Pilli advised the court that he failed to appear because he "presumed" the case had been continued to January 17, and that he was unable to determine whether a newly employed secretary had gotten a call back on the continuance. (Bar Ex. 8). Subsequently, at the hearing on December 12, Mr. Pilli indicated that his secretary of two years had confirmed the continuance date. (The September 26 letter to the client bears the initials of mqc as typist, and the Affidavit of Mollie Coleman, the two year secretary, offered as an exhibit by the Bar and admitted into evidence, stated that the Clerk's Office informed her that the matter had been continued to January 17. Ms. Coleman did not testify at the show cause hearing before Judge Cassidy, but did testify at the appeal of the show cause summons to circuit court.)

Immediately following the December 12 show cause rehearing before Judge Cassidy, Respondent proceeded to lambast Judge Cassidy. Respondent filed a "Reply to Supplemental Order of Judge Cassidy" (Bar Ex. 16), a pleading not described in the rules of procedure. In that pleading, filed in the clerk's office where Judge Cassidy sits, Respondent attacked Judge Cassidy for inappropriate and inaccurate statements, failing to tell all of the facts and failing to tell the truth, skewing the

facts, and exhibiting a lack of patience and tolerance. He further asserted that he “could not tolerate a Judge lying to this Court, to this Attorney, to the Judicial Review Commission and to the Virginia State Bar.” Respondent made similar comments in the complaint that he filed with JIRC that same date, referring to the judge as the “Honorable” Judge Michael Cassidy or just “Cassidy”. The JIRC complaint was filed not only with the Commission, but also with the Bar and the Disciplinary Board.

ISSUES

Respondent was charged with the following ethical violations:

RULE 3.3 Candor Toward the Tribunal
(a) (1), (4) ***

RULE 8.2 Judicial Officials

RULE 8.4 Misconduct
(b), (c) ***

DECISION

At the conclusion of the Bar’s evidence, Respondent moved to strike the evidence. Following argument, the Board retired to consider the motion. Upon due deliberation, the panel determined that there was no evidence that Mr. Pilli had made a false statement of fact to a tribunal, offered evidence which he considered to be false, or engaged in professional conduct involving dishonesty, fraud, deceit or misrepresentation. Accordingly, the Rule 3.3 and Rule 8.4(d) violations were stricken. The Bar had admitted the Coleman Affidavit into evidence, and there was no evidence to rebut Ms. Coleman’s testimony in the affidavit that she had called the Fairfax County clerk’s office and confirmed the continuance to January 17. The basis of the allegation that Mr. Pilli had misrepresented anything would therefore have to lie on Judge Cassidy’s testimony that Mr. Pilli’s explanation had shifted from his earlier statements to the court. The earlier statements are contained in a typed transcript of a voicemail message (Bar Ex. 8) that Respondent left with Judge Cassidy on October 22, six days after the hearing that he failed to attend. The statements in that voicemail do not materially conflict with the Coleman affidavit, and can be seen as an attempt by an attorney to make sense out of what should have been a very ordinary situation but which had instead spiraled out of control.

Following the conclusion of all of the evidence, counsel argued the remaining two issues. Those issues boiled down to whether the imposition of the criminal contempt order (Bar Ex. 13 and 15) and/or the failure of Mr. Pilli to accept service of the contempt summons constituted a criminal or deliberately wrongful act that reflects adversely on the lawyer’s fitness as a lawyer, and whether statements made by Mr. Pilli constituted statements made with reckless disregard as to their truth or falsity concerning the integrity of Judge Cassidy.

At the outset, it should be stated that the Board did not consider any statements made by Mr. Pilli in the Complaint that he filed with JIRC. Although Exhibit 17 was admitted into evidence, it was felt that the statements therein were directed at the judicial complaint that Mr. Pilli was filing, which was otherwise privileged. Although he waived that privilege by also filing that complaint with the Virginia State Bar and with the

Virginia State Bar Disciplinary Board, he did not publicize it publicly. Also, the Board did not find the evidence to be sufficient to establish that Mr. Pilli had avoided service of the show cause summons. In fact, he had filed a motion with the court concerning the summons, which arguably subjected him to the jurisdiction of the court, and he did in fact appear in court on the return date and reported to the clerk in the court to which the case was assigned on the docket.

The conviction of criminal contempt is troubling. On appeal, the circuit court found Mr. Pilli guilty for the reasons stated in the orders entered by Judge Cassidy (Ex 13 and 15). Exhibit 13 makes explicit findings that Mr. Pilli exhibited disregard for the scheduling practices of the court and failed to make himself available for service of the summons. The conviction by the circuit court was not appealed to the court of appeals, and stands as a criminal conviction. However, Mr. Pilli was not even charged with the failure to accept service of the summons. Furthermore, it is clear from the record that Respondent followed the procedures of the court in requesting the continuance, the case was continued to a date he did not have available, and he genuinely believed that the case had been continued to a later date. Accordingly, we fail to find clear and convincing evidence that Mr. Pilli has violated Rule 8.4(c).

The Board finds by clear and convincing evidence that Respondent made statements with reckless disregard concerning Judge Cassidy’s qualifications and integrity, and has accordingly violated Rule 8.2. The “Supplemental Reply” (Bar Ex. 16) that Mr. Pilli filed in the clerk’s office on December 12, 2001, contains numerous statements which are inappropriate, without basis in fact, and which clearly accuse Judge Cassidy of mendacity and incompetence.

SANCTIONS

After finding Respondent guilty of having violated Rule 8.2, the panel reconvened to hear evidence concerning sanctions. A copy of Mr. Pilli’s prior disciplinary record was admitted into evidence. Thereupon, the Board retired to consider the appropriate sanction. Mr. Pilli’s prior disciplinary record consisted of two private reprimands and two public reprimands, including one prior case in 1998 involving a contempt citation. *See Moore v Hinkle*, 259 Va. 479, 485; 527 S.E.2d 419, 422 (2000). In addition, Mr. Pilli was held in contempt of court by Judge Mark Simmons of the Fairfax City General District Court on December 27, 2001, and was again found guilty on appeal to the Circuit Court of Fairfax County by order entered June 11, 2002. With due regard to Respondent’s prior disciplinary record, the panel unanimously determined that Respondent’s license to practice law in the Commonwealth of Virginia should be suspended for a period of ninety (90) days, with the effective date of the suspension to be October 1, 2004.

It is accordingly, ORDERED that, pursuant to Part 6, Section IV, Paragraph 13.1(5)(c)(2) of the Rules of the Supreme Court of Virginia, the license of Dominick A. Pilli to practice law in the Commonwealth of Virginia be, and the same hereby is, SUSPENDED effective October 1, 2004.

So ordered this 20th day of September, 2004.
VIRGINIA STATE BAR DISCIPLINARY BOARD
By: Karen A. Gould, Chair



VIRGINIA:

**BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD**

IN THE MATTERS OF

CHARLES LOWENBERG PINCUS III

VSB DOCKET NO. 03-021-1861

VSB DOCKET NO. 03-021-1866

VSB DOCKET NO. 03-021-1868

VSB DOCKET NO. 04-021-0670

VSB DOCKET NO. 03-021-2183

VSB DOCKET NO. 03-000-1873

**ORDER OF SUSPENSION OF 45 DAYS WITH TERMS
AND CRESPA FINE**

These matters were certified to the Virginia State Bar Disciplinary Board ("Board") by the Second District Committee, Section I, and were set for hearing scheduled for July 23, 2004 before a duly convened panel. On July 19, 2004, these matters were presented for approval of an agreed disposition to a duly convened panel consisting of Peter A. Dingman, Esquire, Chair, Mr. Chester J. Cahoon, Jr., Lay Member, Bruce T. Clark, Esquire, Robert E. Eicher, Esquire, and Ann N. Kathan, Esquire.

Pursuant to Virginia Supreme Court Rules of Court Part 6, Section IV, ¶13B(5)(c), the Virginia State Bar, by Paul D. Georgiadis, Assistant Bar Counsel, and the Respondent, by counsel David Ross Rosenfeld with co-counsel Kathleen M. Uston, entered into a proposed agreed disposition and presented it to the convened panel.

The Chair polled the panel members to determine whether any member had a personal or financial interest in this matter that might affect or reasonably be perceived to affect his or her ability to be impartial in this proceeding. Each member, including the Chair, verified that they had no conflicts.

I. FINDINGS OF FACT

VSB Docket No. 03-021-1861

1. At all times material to these allegations, Charles Lowenberg Pincus, III, hereinafter "Respondent", has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. Respondent maintained an attorney escrow account for his non-real estate matters, account number 80-155-341 at SouthTrust Bank, titled as Charles L. Pincus, III, P.C. Escrow Account.
3. On October 7, 2002, Respondent deposited a check of \$1,000.00 into the Escrow Account. On October 15, 2002, more than five (5) business days after being deposited and through no fault of Respondent, the \$1,000.00 check was returned, resulting in a charge on October 15, 2002 of \$5.00 for a return item fee. On October 12, 2002, Respondent drew check number 1275 in the amount of \$100.00 payable to the State Corporation Commission. Although SouthTrust honored the \$100.00 check upon presentation on October 21, 2002, the resulting negative balance caused SouthTrust to impose an insufficient funds service charge of \$30.00. Respondent's month-end escrow account statement dated, October 31, 2002, reflected a negative balance of -\$109.02.
4. Upon learning of the returned \$1,000.00 deposit and the resulting service charges, Respondent deposited \$100.00 of his own funds into the escrow account on November 6, 2002.
5. On November 13, 2002, Respondent drew check number 1277 on his escrow account payable to the Clerk of Court, Virginia Beach Circuit Court, in the amount of \$20.00 for the recordation of the Ortiz Deed of Gift.
6. Because Respondent's escrow account had a negative balance of \$109.02, when check number 1277 was presented, SouthTrust Bank returned check number 1277 for insufficient funds and imposed additional service charges of \$40.00.
7. During this period of time, Respondent was not maintaining a general ledger, including a cash receipts journal and a cash disbursements journal, nor a subsidiary ledger.

VSB Docket No. 03-021-1866

VSB Docket No. 03-021-1868

8. Respondent maintained a separate fiduciary trust account for the purpose of handling funds received in connection with escrow, closing, or settlement services, SouthTrust Bank account number 10-157-778, titled as Charles L. Pincus III PC Real Estate Trust Account.
9. On or before November 6, 2002, Respondent issued a pay-off check of \$12,869.97 in the course of a real estate closing from Ann Hayward Rooney Walker to Troy B. Toner. When the check for \$12,869.97 was presented for payment on November 6, 2002, Respondent's Real Estate Trust Account had insufficient funds, a balance of only \$11,868.33.
10. Because of insufficient funds in the Real Estate Trust Account, SouthTrust did not pay the amount on November 6, 2002 or on November 14, 2002 when the check for \$12,869.97 was re-presented for payment.
11. On or about December 11, 2002, Respondent paid the Walker pay-off with a cashier's check.
12. On January 16, 2003, Respondent was out of trust again when he incurred an insufficient funds charge of \$30.00.
13. During this foregoing period of time, Respondent was not maintaining a general ledger, including a cash receipts journal and a cash disbursements journal, nor a subsidiary ledger.

VSB Docket No. 03-021-2183

14. On or about April 19, 2002, Complainant Jennifer L. Liuzzi retained Respondent to pursue a fraud action against Bay Breeze Auto Broker.
15. On December 24, 2002, Respondent deposited \$50.00 from Ms. Liuzzi into his escrow account, after paying \$36.00 in filing and service fees in this matter on December 18, 2002.
16. During this period of time, Respondent did not establish and maintain a subsidiary ledger for Ms. Liuzzi's funds.

VSB Docket No. 04-021-0670

17. On January 7, 2003, the Harringtons retained Respondent for a Chapter 7 bankruptcy case. At that time they paid him \$250.00.
18. On June 13, 2003, Respondent wrote check #1308 in the amount of \$200.00 as a filing fee for the Harrington bankruptcy case. Check #1308 was written on Respondent's attorney escrow account for his non-real estate matters, account number 80-155-341 at SouthTrust Bank, titled as Charles L. Pincus, III, P.C. Escrow Account. Respondent sent this check with a disc containing the Petition to the Bankruptcy Court for filing. Because the Court was unable to open the disc, the case was not filed and Respondent received check #1308 with the unfiled petition.
19. On August 6, 2003, Respondent re-filed the disc containing the petition along with his check #1308 for \$200.00 as a filing fee. When the check was presented for payment, there was a balance of only \$136.98; the bank paid the full amount, and on August 19, 2003, Respondent made an additional covering deposit.
20. The subsidiary or client ledger maintained by Respondent at that time for the Harringtons, which Respondent entitled his client "transaction ledger", fails to reflect funds disbursed as reflected in the general ledger: June 6, 2003 filing fee payment of \$200.00 by check #1308; courier costs paid on June 6, 2003 by check #1311; or August 19, 2003 legal fees of \$100.00 paid apparently by an account transfer.
21. The escrow account general ledger maintained by Respondent at that time for the pertinent time period reflects a number of deficiencies. The check in question, #1308, is labeled "ADVANCED . . ." and does not reflect a payment on behalf of the Harringtons.
22. During the relevant time period, Respondent's escrow account was out of trust as there were negative balances reflected in the general ledger when checks were written on August 5, 2003 for a court filing fee, and on August 19, 2003 for a fee withdrawal.
23. For the relevant time period, neither Respondent's general ledger nor client subsidiary ledger were reconciled.
24. There is no evidence that Respondent intentionally misused or misappropriated client funds.
25. Subsequent to the events outlined above, Respondent engaged the services of Jeanne Beilke, a Certified Public Accountant who has installed for the management of all of Respondent's escrow accounts, the QuickBooks Pro 2004 accounting software, has customized that system for a law practice, has implemented a system of computerized check writing, and on line banking. Additionally, Ms. Beilke has implemented accounting and bookkeeping procedures in Respondent's office which include, *inter alia*, customized detailed client ledgers within the QuickBooks program, and secondary proof ledgers created in Excel.
26. Ms. Beilke has reconstructed and reconciled Respondent's escrow accounts for the period covering October 1, 2001 through July 5, 2004.

27. Ms. Beilke has defined and Respondent has adopted strict accounting procedures governing check writing procedures for all accounts, and reconciliation procedures comporting with Rule 1.15 of Virginia's Rules of Professional Conduct.
28. Furthermore, to insure Respondent's strict compliance with the requirements of Rule 1.15, Ms. Beilke will be preparing all required reconciliations on an on-going basis, and have responsibility for ongoing data entry for both trust accounts.
29. In addition to the above, Respondent has engaged the services of Janean S. Johnston, J.D. who has conducted an law office management review and audit of Respondent's office practices and procedures wherein Ms. Johnston has concluded that Respondent "is managing his law practice very efficiently and ethically."

II. NATURE OF MISCONDUCT

The Board finds that such conduct on the part of the Respondent violates the following Rules:

RULE 1.15 Safekeeping Property

- (a) (1), (2) ***
- (c) (3) ***
- (e) (1) (i), (ii), (iii), (iv), (v) ***

**III. FINDINGS OF FACT
VSB 03-000-1873**

30. At all times relevant hereto, the Respondent, Charles Lowenberg Pincus, III, "Respondent", has been an attorney licensed to practice law in the Commonwealth of Virginia who has provided and offered to provide escrow, closing and or settlement services as a settlement agent with respect to real estate transactions in Virginia.
31. On October 15, 2001, the Virginia State Bar suspended Respondent's law license for failure to comply with the requirement for Mandatory Continuing Legal Education. The Virginia State Bar did not reinstate Respondent's law license to good standing until April 19, 2002.
32. As a result of Respondent's license suspension of October 15, 2001, Respondent's CRESPA registration and file were "closed" on October 17, 2001. On October 17, 2001, the Virginia State Bar issued notice to Respondent of the closing of his registration and notified Respondent that he therefore ". . . cannot lawfully conduct residential real estate closings after this date If you should start performing escrow, closing, or settlement services, you must re-register as a settlement agent under CRESPA." Respondent received actual notice of the October 17, 2001 notice on November 2, 2001.
33. Respondent did not re-register and attain his CRESPA registration until July 10, 2003.
34. Notwithstanding the loss of his CRESPA registration and actual notice of the legal prohibition from serving as settlement agent for residential closings, Respondent thereafter conducted seven (7) residential real estate closings, each involving transactions involving the purchase of or lending on the security of real estate located in the Commonwealth of Virginia containing not more than four residential dwelling units:

- A. On July 31, 2002, Respondent as settlement agent conducted the closing on Walker to Toner;
 - B. On December 23, 2002, Respondent as settlement agent conducted the closing of McDonnell to Bond;
 - C. On March 17, 2003, Respondent as settlement agent conducted the Siciliano closing;
 - D. On March 24, 2003, Respondent as settlement agent conducted the closing of Nolen;
 - E. On March 31, 2003, Respondent as settlement agent conducted the closing of Siegal and Dillon to Thumm;
 - F. On April 4, 2003, Respondent as settlement agent conducted the closing of Yaba to Davis; and
 - G. On July 1, 2003, Respondent as settlement agent conducted the closing of Johnston and Kowalski to Johnson.
35. Although Respondent was not CRESPA certified, he was fully bonded and Insured Closing Protection letters had been issued to each client.
36. Respondent is now CRESPA certified.

IV. MISCONDUCT

The Board finds that such conduct on the part of the Respondent violates Virginia Code Section 6.1-2.26A and Section 15 VAC 5-80-30 of the Regulations issued by the Virginia State Bar pursuant to CRESPA.

IMPOSITION OF 45 DAY SUSPENSION WITH TERMS AND CRESPA FINE OF \$2,000

The Board, having considered all evidence before it and having considered the nature of the Respondent's actions, and having considered the Respondent's disciplinary record, ORDERS pursuant to Part 6, Sec. IV, Para. 13I 2f.(c) of the Rules of the Virginia Supreme Court that the license of the Respondent, Charles Lowenberg Pincus, III, to practice law in the Commonwealth of Virginia be, and the same is, hereby suspended for forty-five (45) days, effective August 1, 2004.

Pursuant to the terms of the parties' Agreed Disposition, it is further ORDERED that Respondent complete the following terms:

- I. Probationary/Oversight/Terms Period of EIGHTEEN (18) months commencing August 1, 2004, or such shorter period as Assistant Bar Counsel may deem appropriate, during which:
 - A). Mr. Pincus shall provide to Assistant Bar Counsel or his designee monthly cash receipts, cash disbursement, and reconciliation reports signed by Respondent and Ms. Beilke for all escrow and CRESPA accounts and subsidiary ledgers therein to reflect reconciled balances. Said reports will be due 30 days from the last day of the preceding month;
 - B). Mr. Pincus shall not cause any overdraft notices to be issued that are determined to be caused by any factor other than bank error as admitted by the bank;

- C). Mr. Pincus agrees to allow an on-site inspection at his office and records of escrow accounts by Bar Counsel or his designee—to include a VSB Investigator, with 48 hours written notice to Mr. Pincus' address of record. The scope and purpose of the inspection(s) is to insure compliance with Rule 1.15; and
 - D). Respondent shall remain in full compliance with Rule 1.15.
- II. Respondent shall pay a CRESPA fine of \$2,000 on or before October 15, 2004.

Upon satisfactory proof that such terms and conditions have been met, these matters shall be dismissed. If, however, any of the aforesaid terms are breached, the parties agree the Board shall impose a further suspension of THREE (3) years, following a show cause hearing as to the Respondent's compliance with said terms. In the allegation of such breach, the Virginia State Bar shall issue and serve upon the Respondent a Notice of Hearing to Show Cause why the alternate sanction of a three year suspension should not be imposed. The parties agree the jurisdiction for the Show Cause hearing shall be the Disciplinary Board. The sole factual issue before the Board will be whether the Respondent has violated the terms of this Agreed Disposition without legal justification or excuse. All issues concerning the Respondent's compliance with the terms of this Agreed Disposition shall be determined by the VSB Disciplinary Board. At said hearing, the burden of proof shall be on the Respondent to show timely compliance and timely Certification of such compliance by clear and convincing evidence. The Respondent also agrees his prior disciplinary record may be disclosed to the Board.

ENTERED this 20th day of July, 2004.
 VIRGINIA STATE BAR DISCIPLINARY BOARD
 By: Peter A. Dingman 2nd Vice Chair



VIRGINIA:
 BEFORE THE VIRGINIA STATE BAR
 DISCIPLINARY BOARD

IN THE MATTER OF
STEVEN JEFFREY RIGGS
 VSB DOCKET NOS. 04-000-3662

ORDER OF SUSPENSION

This matter came on to be heard on July 23, 2004, at 9:00 a.m., in Courtroom C of the Virginia State Corporation Commission, 1300 East Main Street, Richmond, Virginia 23219, before a panel consisting of Karen A. Gould, Chair, Bruce T. Clark, Ann N. Kathan, Robert E. Eicher, and Werner H. Quasebarth, lay member.

The Virginia State Bar was represented by Harry M. Hirsch, Deputy Bar Counsel. Steven Jeffrey Riggs (the "Respondent") did not appear, in person or by counsel, neither he nor anyone for him responded when the Clerk called his name three times in the corridor adjacent to the Courtroom.

* * *

The Chair inquired of the members of the panel of the Board whether any of them had any personal or financial interest or any bias that would preclude their hearing this matter fairly and impartially, to which inquiry each member and the Chair answered in the negative.

The matter came before the Board on the Board's Rule to Show Cause why the Respondent's license to practice law in the Commonwealth of Virginia should not be suspended by reason of the disciplinary suspension of his license to practice law in the State of California.

Bar counsel made an opening statement and thereafter VSB Exhibits 1 and 2 were admitted without objection.

I. FINDINGS OF FACT

The Board makes the following findings of fact based on clear and convincing evidence, to wit:

1. At all times relevant hereto, the Respondent has been an attorney licensed to practice law in the Commonwealth of Virginia, and his address of record with the Virginia State Bar has been 1146 Civil Center Drive West, Santa Ana, California 92703.
2. The Rule to Show Cause was properly issued and duly served on the Respondent by certified mail on June 25, 2004, at his address of record with the Virginia State Bar.
3. The Respondent has not filed any response to the Rule to Show Cause and has failed to appear, in person or by counsel, in response to the Rule to Show Cause.
4. By Order of the Supreme Court of California (En Banc), filed on March 22, 2004, which has become final, the Respondent has been suspended from the practice of law in the State of California for a period of two years on the terms and conditions therein provided for misconduct, subject to reinstatement upon his compliance with the conditions imposed in the Order.

II. DISPOSITION

The Board notes that if the Respondent fails to file a timely written response to the Rule to Show Cause, or fails to appear at the hearing on the Rule to Show Cause, the Board is required to impose the same discipline on the Respondent that was imposed in the State of California. Rules of the Supreme Court of Virginia, Pt. 6, § IV, Para. 13(D)(6)(f).

Accordingly, it is ORDERED that the Respondent's license to practice law in the Commonwealth of Virginia be and hereby is SUSPENDED for a period of two years, which suspension is stayed except that an actual suspension be and hereby is imposed for a period of six months effective March 22, 2004; provided, however, that such actual suspension shall continue in effect until the Virginia State Bar receives verification that the Respondent has complied with the conditions for reinstatement contained in the Order of the Supreme Court of California, filed March 22, 2004, in State Bar Court Case No. 01-0-05002, 02-0-11248, 02-0-12626, 02-0-13024, 03-H-00306; provided, further, that the Respondent is placed on probation for three years from March 22, 2004, subject to the conditions imposed by the aforesaid Order of the Supreme Court of California.

Enter this Order this 27th day of July, 2004.
VIRGINIA STATE BAR DISCIPLINARY BOARD
Karen A. Gould, Chair



VIRGINIA:
BEFORE THE VIRGINIA STATE BAR
DISCIPLINARY BOARD

IN THE MATTER OF
RANDY ALAN WEISS, ESQUIRE
VSB DOCKET NO: 04-052-2066

ORDER AND OPINION

This matter came before the Virginia State Bar Disciplinary Board on August 12, 2004, upon an Agreement to Imposition of Reciprocal Discipline, as a result of a Rule to Show Cause and Order of Suspension and Hearing entered on July 29, 2004. A duly convened panel of the Virginia State Bar Disciplinary Board consisting of Thaddeus T. Crump, lay member, William M. Moffet, Esquire, James Leroy Banks Jr., Esquire, Ann N. Kathan, Esquire, and Robert L. Freed, Esquire, 1st Vice Chair presiding, heard the matter. Noel D. Sengel, Senior Assistant Bar Counsel, appeared as Counsel to the Virginia State Bar ("VSB"), and Timothy J. Battle, Esquire appeared as counsel for the Respondent.

Having considered the Agreement to the Imposition of Reciprocal Discipline, the Board finds by clear and convincing evidence as follows:

STIPULATIONS OF FACTS

1. At all times relevant hereto, the Respondent, Randy Alan Weiss, Esquire (hereinafter Respondent) has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. In May of 1997, the Respondent voluntarily notified his law firm and the District of Columbia Bar Counsel that he had diverted funds from his law firm. The law firm and the Bar were unaware of the Respondent's diversion of funds when he notified them of his actions. The Respondent admitted that, in a number of transactions he handled on behalf of his law firm between April of 1993 and May of 1997, he diverted portions of the title insurance fees that were due to the law firm to his own personal account. The Respondent converted a total of \$676,465.99. Shortly after revealing his conduct to the firm, the Respondent repaid the converted funds to his firm.
3. The Respondent did not retain the 17.2% of the fees which he would have been entitled to as a partner in the firm had he paid the money into the firm initially. The Respondent also paid for the costs of the audit and the fees of the firm's outside counsel. He was instrumental in the firm's development and adoption of a two-signature practice for checks. He sought counseling and independent psychiatric analysis related to the charges of misconduct. Dr. Thomas Goldman and Dr. Richard Ratner agreed that the Respondent was unlikely to repeat his misconduct.

4. The Respondent's license to practice law before the United States Court of Appeals for the District of Columbia Circuit was suspended commencing May 20, 2004 for three years, with one year suspended, for illegally taking funds from his law firm.

STIPULATIONS OF MISCONDUCT

The aforementioned conduct on the part of the Respondent constitutes a violation of the following Disciplinary Rules:

DR 1-102. Misconduct.
 (A) (3), (4) ***

Upon consideration of the Agreement to Imposition of Reciprocal Discipline before this panel of the Disciplinary Board, it is hereby ORDERED that, pursuant to Part 6, § IV, ¶ 13(D)(6) of the *Rules of Virginia Supreme Court* the license of Respondent, Randy Alan Weiss, Esquire, to practice law in the Commonwealth of Virginia shall be, and is hereby, suspended for a period of three years with one year suspended, and for so long as the District of Columbia probation is in effect, commencing July 29, 2004, the date of the original Virginia Rule to Show Cause and Order of Suspension and Hearing.

SO ORDERED, this 20th day of August, 2004.
 By: Robert L. Freed, 1st Vice Chair
 Virginia State Bar Disciplinary Board



DISTRICT COMMITTEES

VIRGINIA:
 BEFORE THE SIXTH DISTRICT COMMITTEE
 OF THE VIRGINIA STATE BAR

IN THE MATTER OF
WILLIAM G. BENINGHOVE
 VSB DOCKET NO. 02-060-2493

**DISTRICT COMMITTEE DETERMINATION
 (PUBLIC ADMONITION)**

On June 8, 2004 and August 17, 2004, a hearing in this matter was held before a duly convened Sixth District Committee panel consisting of Mark A. Butterworth Lay Member; John E. Graham, Lay Member; William E. Glover, Esq.; Richard H. Smart, Esq.; and Christopher A. Abel, Esq., Chair, presiding.

Williani G. Beninghove appeared in person *pro se*. Deputy Bar Counsel Harry M. Hirsch appeared as counsel for the Virginia State Bar.

This matter was heard simultaneously with the case against Bruce Patrick Ganey, Esq., VSB Docket No. 02-060-2490.

Pursuant to Part 6, Section IV, Paragraph 13.H.2.n. of the Rules of the Virginia Supreme Court, the Sixth District Committee of the Virginia State Bar hereby serves upon the Respondent the following Admonition:

I. FINDINGS OF FACT

1. At all times relevant hereto the Respondent, William G. Beninghove [Beninghove], has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. In or about February 1999, Bruce Patrick Ganey [Ganey] was hired by Denise Seal-Connell [Denise] to sell two parcels of property [property] to obtain funds for back child support owed to Denise by her ex-husband, who had previously deeded his interest in the property to his children as part of a 1995 agreement drawn by Ganey to resolve then owed child support. The representation also included settling other arrearages in payments for medical expenses and hospitalization costs. As a part of the representation, Ganey told Denise he would obtain a survey and appraisal for the property.
3. On or about February 5, 1999, Denise sent a memo to heirs of E.C. Mantlo and his wife, Georgia, both deceased, indicating her intention to file a partition suit for the purpose of selling the property. The memo went to potential respondents including Debra Sue Largen [Debra] and others. Both Denise and Debra subsequently filed bar complaints against Ganey with the Virginia State Bar. The bar complaint by Denise was consolidated into the bar complaint previously filed by Debra. Both bar complaints arose out of the partition suit.
4. Debra and the other potential respondents hired Beninghove to represent them in the partition suit. Many of the potential defendants were elderly. Debra's bar complaint against Ganey also constituted a bar complaint against Beninghove.
5. Beninghove sent a letter to the potential respondents, the Mantlo heirs, who hired him regarding the potential partition suit. In the letter Beninghove indicated, *inter alia*, that the property would be appraised and probably surveyed, costs would be charged to each person's share with a possible nominal up front charge, the case would take several months to complete and he was in discussions with Ganey about the partition suit.
6. In or about June of 1999, Ganey and Beninghove presented a proposed agreement [agreement] to their clients regarding a partition suit including a provision that as special commissioners they would receive a 10% special commissioners' fee.
7. On or about July 19, 1999, Ganey filed the partition suit in Hanover County Circuit Court on behalf of the children of Denise by Denise, and on behalf of Sherry Rebman [Sherry].
8. All of the clients signed the agreement in or about September 15, 1999, except for Sherry.
9. Beninghove answered the partition suit on behalf of the respondents by essentially asking for entry of the proposed decree of sale and agreeing to all requests in the bill of complaint.
10. On November 13, 1999, Sherry noted her rejection of the agreement.

11. On November 29, 1999, a decree of sale was entered which appointed Ganey and Beninghove special commissioners and required them, *inter alia*, to request an appraisal and survey of the property before it was sold.
12. In or about early December of 1999, Debra wrote to Ganey and Beninghove revoking her signature on the agreement and Beninghove's other clients also noted on the agreement their rejection of it.
13. By letter dated February 21, 2000 to Beninghove, Ganey stated he will contact an appraiser and surveyor for the property and attempt to get both to defer payment until the property is sold.
14. By letter dated March 7, 2000 to his clients, Beninghove enclosed a copy of the November 29, 1999 decree of sale and Ganey's February 21, 2000 letter.
15. In or about March of 2000, Gregory Pomije, Esq. [Pomije] opened a file for limited representation of Debra and the other respondents in the partition suit. Debra, acting on behalf of herself and the other respondents, had consulted Pomije about the agreement and learned of the existence of Va. Code Section 8.01-109 [the statute] which limits the commission of a special commissioner in a judicial sale to five percent on amounts up to and including \$100,000.00 and two percent on all amounts over \$100,000.00 which amounts must be apportioned if there are two special commissioners. Debra and the respondents wanted the ten percent commission reduced.
16. On April 3, 2000, Pomije wrote to Beninghove and Ganey in an effort to change the agreement to conform to the statute. Ganey replied by letter dated April 18, 2000, in which he indicated he would not agree to a reduced commission in accordance with the statute although he noted he knew of the statute's import. Ganey also indicated that he had engaged the services of an appraiser and was ready for a surveyor to survey the property.
17. Pomije replied in an April 24, 2000 letter that the respondents did not agree with Ganey, but all agreed the property must be sold. Pomije also enclosed a case which he felt made his point, *Austin v. Dobbins*, 219 Va. 930 (1979).
18. On May 23, 2000, Pomije filed a motion to amend the decree of sale which was heard on June 22, 2000. A second decree was entered on June 22, 2000 in which the agreement was deemed void upon agreement of the parties, the decree of sale was ordered conformed with statutory requirements of judicial sales and a one million dollar surety bond was imposed. At the hearing Beninghove and Ganey agreed to a commission amount in accordance with the statute.
19. Neither Beninghove nor Ganey discussed with their clients the potential need for them to pay for a survey and appraisal before the farm was actually sold.
20. In August of 2000, Ganey approached Cameron B. Wood [Wood] about doing an appraisal and locating a surveyor.
21. On or about August 9, 2000, Beninghove told Debra a survey was not yet ordered but its estimated cost was \$11,500.00.
22. In or about September of 2000, Debra and her husband visited Beninghove's office. Beninghove asked them to provide names of reputable surveyors because he thought the \$11,500.00 price was high. Subsequently, Debra's husband informed Beninghove of the name of a surveyor who had offered to survey the property for \$9,000.00.
23. In November of 2000, Ganey notified Denise of the entry of the June 2000 decree.
24. On November 8, 2000, Beninghove told Debra he had spoken with Ganey, that a survey had been ordered ten days earlier and would take three to four weeks to complete.
25. In December of 2000, Denise hired John Goots, Esq. on the child support collection issue.
26. Pomije wrote Ganey and Beninghove a January 29, 2001 letter on behalf of the respondents asking for progress on a survey and appraisal and offering assistance to facilitate a sale of the property.
27. Wood found a surveyor in March of 2001. The survey was completed on or about April 30, 2001.
28. On October 3, 2001, Denise wrote Ganey stating he had been previously fired on the partition suit and he now needed to withdraw as special commissioner. Denise received no response to the letter.
29. Denise wrote Ganey on November 6, 2001, stating that she had received no response to her October 3, 2001 letter, no communication from Ganey since the fall of 2000 and requesting the status of the partition suit. Denise received no response to the letter.
30. On December 17, 2001, Debra called Beninghove who returned her call later that day. Beninghove told her Wood had been sick, but should be finished with the appraisal by now.
31. Robert Harris, Esq. [Harris] was retained by Denise, superceding Ganey and Goots. On December 28, 2001, he wrote Ganey and Beninghove seeking their voluntary withdrawal as special commissioners in the partition suit.
32. Wood did not begin an appraisal of the property until January of 2002. But due in part to family responsibilities which minimized his ability to work the first half of 2002, his appraisal reports on the property were not completed until October 6, 2002.
33. On January 10, 2002, Wood wrote Ganey indicating that Ganey had requested a proposal for an appraisal of the property in August of 2000, that he found a surveyor in March of 2001, and was still preparing his report.
34. Separate related proceedings by Denise involving child support were suspended pending the completion of the partition suit. As a result of a conflicting order in the related case, Ganey wrote to Judge Alderman on August 22, 2002, seeking the advice and guidance of the court about how to proceed in the partition suit.

35. On October 9, 2002, a hearing was held in the partition suit on the request for advice and guidance resulting in an order to sell the property pursuant to the November 29, 1999 order and report the highest bid to the court before December 13, 2002. On December 11, 2002, a hearing was held to approve the sale.
36. On January 7, 2003, an order was entered approving the sale, noting the special commissioners' fees were in accordance with Va. Code Section 8.01-109 and the costs of sale were to be paid in accordance with an attached schedule. The property, consisting of two parcels, sold for \$450,000.00 and \$370,000.00, respectively.
37. The sale of the property closed on February 7, 2003, and an order approving final settlement statements and disbursements was entered on April 22, 2003.
38. Both Denise and Debra attempted to communicate with Ganey and Beninghove, both as their respective attorneys and as special commissioners. Ganey and Beninghove failed to communicate reasonably with Denise and Debra as their respective clients and as special commissioners.
39. Ganey and Beninghove failed to attend promptly to the partition suit until completed or until they had withdrawn. Ganey and Beninghove failed to act with reasonable diligence and promptness in respectively representing Denise and Debra and as special commissioners.
40. In his letter dated April 18, 2000 to Pomije, Ganey misrepresented that he had engaged the services of an appraiser when in fact he had not done so.
41. In his conversation on November 8, 2000 with Debra, Beninghove misrepresented that a survey had been ordered ten days earlier when in fact no such survey had yet been ordered.
42. Debra incurred attorney's fees to Pomije in the amount of about \$3,000.00 which she maintains resulted from the way in which Beninghove and Ganey conducted the partition suit.
43. Denise incurred about \$15,000.00 in attorney's fees for the services of subsequent counsel Robert Harris, which she believes resulted from the way in which Beninghove and Ganey conducted the partition suit.
44. There were delays in the completion of the partition suit. Denise was told by Ganey that Debra and the other defendants had hired an attorney to fight the sale. However, when Debra and Denise ultimately met and discussed the matter, they realized that both sides wanted to complete the sale as soon as possible but both sides were unhappy because of the attempt to charge a ten percent commissioners' fee.
45. The attempt to charge a ten percent special commissioner's fee amounted to an attempt to charge an unreasonable fee.

II. NATURE OF MISCONDUCT

Such conduct on the part of William G. Beninghove constitutes misconduct in violation of the following provisions of the Virginia Code of Professional Responsibility and the Virginia Rules of Professional Conduct:

DR 6-101. Competence and Promptness.

(B), (C) ***

DR 2-105. Fees.

(A) ***

RULE 1.3 Diligence

(a) ***

RULE 1.4 Communication

(a), (b) ***

RULE 1.5 Fees

(a) (1), (2), (3), (4), (5), (6), (7), (8) ***

III. ADMONITION

Accordingly, it is the decision of the Sixth District Committee to impose an admonition and the Respondent is hereby so admonished.

SIXTH DISTRICT COMMITTEE
OF THE VIRGINIA STATE BAR
By Christopher A. Abel, Chair



VIRGINIA:
BEFORE THE SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
JAMES NEWTON DICKSON III
VSB DOCKET NO. 02-070-0731

**SUBCOMMITTEE DETERMINATION
PUBLIC REPRIMAND**

On August 12, 2004, a meeting in this matter was held before a duly convened Seventh District Subcommittee consisting of Douglas D. Baumgardner, Larry Lambert, lay member, and Grant Richardson, presiding.

Pursuant to the provisions of the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13.G.1.1., the Seventh District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand, as set for the below:

I. FINDINGS OF FACT

1. A Private Reprimand with Terms was agreed to and signed by Assistant Bar Counsel, Claude Worrell (Mr. Worrell), and Respondent and was presented to and accepted by a duly convened subcommittee of the Seventh District Committee of the Virginia State Bar.
2. The factual findings of the subcommittee of the Seventh District Committee found that the Respondent, an attorney licensed to practice law in Virginia at all times relevant to the matter, represented the Complainant, Philip McAfee, in an appeal of a conviction of a parole violation in Rockingham County. On April, 30, 2001, the Respondent

filed a notice of appeal and an a order for trial transcripts, giving him until June 14, 2001, to get the trial record filed with the Court of Appeals. However, the order for the transcripts was not signed and entered by a Circuit Court Judge until June 9, 2001, and the transcripts were not filed with the Court of Appeals until June 22, 2001. The Court of Appeals dismissed Mr. McAfee’s appeal on September 21, 2001.

- 3. On November 21, 2002, the Seventh District Subcommittee served James Newton Dickson, III (Mr. Dickson or Respondent) with their Subcommittee determination for a Private Reprimand with Terms.
4. The alternative disposition delineated in the Subcommittee determination, to be applied if the specified terms were not completed by July 31, 2003, is a Public Reprimand.
5. On March 9, 2003, James Newton Dickson, III, wrote Mr. Worrell to direct him as follows: “Please go ahead and give me a Public Reprimand.”
6. No certification has been received since March 9, 2003, verifying that the Respondent has complied with the specific terms of the Private Reprimand with Terms.

II. NATURE OF MISCONDUCT

The Subcommittee finds that the following Rule of Professional Conduct has been violated:

RULE 1.3 Diligence
(a) ***

III. PUBLIC REPRIMAND

Accordingly, it is the decision of the Subcommittee to offer the Respondent a disposition of this complaint by imposition of a Public Reprimand.

IV. COSTS

THE VIRGINIA STATE BAR
By Grant Richardson, Chair Designate



VIRGINIA:
BEFORE THE SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR

IN THE MATTER OF
ROYCE LEE GIVENS JR, ESQ.
VSB DOCKET No. 04-070-0396

SUBCOMMITTEE DETERMINATION
PUBLIC REPRIMAND

On August 12, 2004, a meeting in this matter was held before a duly convened Seventh District Subcommittee consisting of Douglas K. Baumgardner, Esquire, Larry Lambert, lay member, and Grant Richardson, Esquire, presiding.

Pursuant to the provisions of the Rules of the Supreme Court of Virginia, Part 6, Section IV, Paragraph 13(G)(1), the Seventh District Subcommittee of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand, as set forth below:

I. FINDINGS OF FACT

- 1. At all times relevant hereto Royce Lee Givens, Jr., Esquire, (“Respondent”), was an attorney licensed to practice law in the Commonwealth of Virginia.
2. In January 1999, Respondent undertook the representation of Sharon Payne in a claim against a financial institution and its chief officer (“Defendant”).
3. During a trial on the matter, the court granted Defendant’s motion to strike.
4. Thereafter, on Defendant’s motion for sanctions and an award of attorney’s fees, in a letter opinion dated August 17, 2001, the trial court ruled that “[t]he suit was not warranted by existing law” “was imposed for an improper purpose, and “imposed upon the Plaintiff and her counsel [Respondent] jointly and severally” a sanction of \$5,000.
5. In a letter opinion dated November 1, 2001, the trial court ordered “plaintiff and her counsel [Respondent], jointly and severally,” to pay Defendant’s attorneys fees and costs in the amount of \$37,725.22.
6. Respondent has paid the amounts ordered by the trial court.

II. NATURE OF MISCONDUCT

The Subcommittee finds that the following Rules of Professional Conduct have been violated:

Rule 3.1. Meritorious Claims And Contentions.

III. PUBLIC REPRIMAND

Accordingly, it is the decision of the Subcommittee to offer the Respondent a disposition of this complaint by imposition of a PUBLIC REPRIMAND.

IV. COSTS

SEVENTH DISTRICT SUBCOMMITTEE
OF THE VIRGINIA STATE BAR
By Grant A. Richardson
Chair/Chair Designate



VIRGINIA:
BEFORE THE FIFTH DISTRICT SECTION II
SUBCOMMITTEE OF THE VIRGINIA STATE BAR

IN THE MATTER OF
TED WILLIAM HUSSAR, ESQ.
VSB DOCKET No. 03-052-2834

**SUBCOMMITTEE DETERMINATION
PUBLIC REPRIMAND**

On the 14th day of September, 2004, a meeting in this matter was held before a duly convened a subcommittee of the Fifth District Committee Section I consisting of Jolm Edwin Coffey, Esq., John E. Zoul, and Richard J. Ruddy Jr., Esq., presiding.

Pursuant to Part 6, § IV, ¶ 13(G)(1)(c) of the *Rules of Virginia Supreme Court*, a subcommittee of the Fifth District Committee Section II of the Virginia State Bar hereby serves upon the Respondent the following Public Reprimand:

I. FINDINGS OF FACT

1. At all times relevant hereto the Respondent, Ted William Hussar, Esq. (hereinafter the Respondent), has been an attorney licensed to practice law in the Commonwealth of Virginia.
2. On March 21, 2000, the Respondent's secretary conducted a closing for a loan in the amount of \$41,500.00, which was secured by a deed of trust on a residence owned by Danny and Shannon Bryant, the Complainants. The HUD-1, Deed of Trust and Deed of Trust Note were all prepared by the Respondent's secretary and executed on March 21, 2000 by the Complainants at the Respondent's office. The loan closing occurred at the request of another client of the Respondent, Mr. Raj Bansal, while the Respondent was on vacation. Mr. Bansal stated that the Bryants insisted on closing the loan that day, and could not wait for the Respondent to return from vacation. The Respondent's office colleague, a Virginia attorney, reviewed the documents but did not conduct the settlement. The Respondent's secretary is not a licensed CRESPA settlement agent as are the Respondent and his office colleague. This was the only time that the Respondent's secretary conducted a settlement. No money was provided to the Respondent's office by Mr. Bansal other than for costs and fees. No funds were disbursed to the Complainants at the loan closing. Mr. Bansal told the Respondent's secretary that he had previously provided some funds to the Bryants and would give them the balance later that day. The Respondent's secretary did not make inquiry of the Bryants as to when or how they were to receive the loan proceeds.
3. Upon the Respondent's return from vacation a day or two later later, the Respondent's secretary apprised him of the loan closing and the circumstances surrounding it. The Respondent spoke with Mr. Bansal who stated that note and deed of trust were to secure an old debt and a new loan which Mr. Bansal claimed to have disbursed to the

Bryants after the closing on March 21, 2000. The Respondent made no inquiry of the Bryants as to whether any funds had been disbursed to them. The Respondent then signed the HUD-1 settlement sheet as the settlement agent, despite the fact that the HUD-1 did not reflect what actually happened at the settlement and stated that the Bryants received \$41,151.00 at settlement. The Respondent also filed the deed of trust against the property without confirming that the proceeds of the loan had been disbursed. During the days and weeks after settlement, the Bryants did not contact the Respondent to inquire about any loan proceeds.

4. In May of 2000, the Respondent instituted a foreclosure action against the Bryants at the request of Mr. Bansal who claimed the Bryants had failed to repay the loan on May 1, 2000 as required by the note.
5. In response to the foreclosure notice, Mrs. Bryant sought legal advice and her counsel filed a bill of complaint to enjoin the sale of the home. At that time, Mrs. Bryant claimed she never received the proceeds of the loan. The Respondent stated that Mr. Bryant told the Respondent that he had received the loan proceeds. After an evidentiary hearing, the Fairfax Circuit Court enjoined the sale of the Bryants' home. However, at the hearing there was some evidence that unbeknownst to Mrs. Bryant, Mr. Bryant may have received loan funds from Mr. Bansal.

11. NATURE OF MISCONDUCT

The Subcommittee finds that the following Rules of Professional Conduct/Disciplinary Rules have been violated:

RULE 1.3 Diligence

(a) ***

RULE 1.9 Conflict of Interest: Former Client

(a) ***

RULE 5.3 Responsibilities Regarding Nonlawyer Assistants

(c) (1), (2) ***

III. PUBLIC REPRIMAND

Accordingly, it is the decision of the Subcommittee that a Public Reprimand shall be imposed, and this matter shall be closed.

FIFTH DISTRICT SECTION II SUBCOMMITTEE
OF THE VIRGINIA STATE BAR
By Richard J. Ruddy Jr., Chair

